

Class No...342.....

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COLLECTION  
OF  
THE ACTS  
OF  
THE CENTRAL LEGISLATURE  
AND OF THE GOVERNOR.  
GENERAL  
FOR THE YEAR  
1940



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## **Short titles of Acts passed by the Central Legislature and made by the Governor General in the year 1940.**

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- I. The Registration (Emergency Powers) Act, 1940.
- II. The Foreigners Act, 1940.
- III. The Royal Indian Navy (Extension of Service) Act, 1940.
- IV. The Offences on Ships and Aircraft Act, 1940.
- V. The Trade Marks Act, 1940.
- VI. The Indian Coinage (Amendment) Act, 1940.
- VII. The Reserve Bank of India (Closing of Annual Accounts) Act, 1940.
- VIII. The Indian Emigration (Amendment) Act, 1940.
- IX. The Reserve Bank of India (Amendment) Act, 1940.
- X. The Arbitration Act, 1940.
- XI. The Coal Mines Safety (Stowing) Amendment Act, 1940.
- XII. The Income-tax Law Amendment Act, 1940.
- XIII. The Reserve Bank of India (Second Amendment) Act, 1940.
- XIV. The Parsi Marriage and Divorce (Amendment) Act, 1940.
- XV. The Excess Profits Tax Act, 1940.
- XVI. The Indian Finance Act, 1940.
- XVII. The Factories (Amendment) Act, 1940.
- XVIII. The National Service (European British Subjects) Act, 1940.
- XIX. The Defence of India (Amendment) Act, 1940.
- XX. The Insurance (Amendment) Act, 1940.
- XXI. The Indian Tariff (Amendment) Act, 1940.
- XXII. The Indian Tariff (Second Amendment) Act, 1940.
- XXIII. The Drugs Act, 1940.
- XXIV. The Indian Mines (Amendment) Act, 1940.
- XXV. The Petroleum (Amendment) Act, 1940.
- XXVI. The Motor Vehicles (Amendment) Act, 1940.
- XXVII. The Agricultural Produce Cess Act, 1940.
- XXVIII. The Indian Works of Defence (Amendment) Act, 1940.

- XXIX. The Indian Navy (Discipline) Amendment Act, 1940.
- XXX. The Indian Navy (Discipline) Second Amendment Act, 1940.
- XXXI. The Cantonments (Amendment) Act, 1940.
- XXXII. The Repealing and Amending Act, 1940.
- XXXIII. The Indian Registration (Amendment) Act, 1940.
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- XXXV. The Code of Criminal Procedure (Amendment) Act, 1940.
- XXXVI. The Indian Companies (Amendment) Act, 1940.
- XXXVII. The War Donations and Investments (Companies) Act, 1940
- XXXVIII. The Reserve Bank of India (Third Amendment) Act, 1940.
- XXXIX. The Motor Spirit (Duties) Amendment Act, 1940.
- XL. The Indian Income-tax (Amendment) Act, 1940.
- XLI. The Indian Sale of Goods (Amendment) Act, 1940.
- XLII. The Excess Profits Tax (Amendment) Act, 1940.
- \* The Indian Finance (No. 2) Act, 1940.

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\*No number was given to this Act which was made by the Governor General under section 67B of the Government of India Act as set forth in Sch. IX to the Government of India Act, 1935.

# ACT No. I OF 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on the  
23rd February, 1940.)*

## **An Act to provide for the registration of certain European British subjects.**

**W**HEREAS it is expedient to provide for the registration of certain European British subjects ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Registration Short title,  
extent,  
commence-  
ment and  
duration. (Emergency Powers) Act, 1940.

(2) It extends to the whole of British India, and applies also to European British subjects in any part of India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

(4) It shall be in force during the continuance of the present war and for a period of six months thereafter.

2. In this Act, unless there is anything repugnant Definitions. in the subject or context,—

(a) “ European British subject ” means any subject of His Majesty of European descent in the male line, born, naturalised or domiciled in the British Islands or in any Dominion as defined in the Statute of Westminster, 1931, or in any Colony except Ceylon ;

(b) “ prescribed ” means prescribed by rules made under this Act.

3. (1) Every  
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3. (1) Every male European British subject for the time being in India (not being—

(a) a member of His Majesty's naval, military or air forces, or

(b) a person who is enrolled under the Auxiliary Force Act, 1920, or is in holy orders, or **XLIX** of 1920. is a regular minister of any religious denomination),

who for the time being has attained the age of sixteen years but has not attained the age of fifty years, shall, within the prescribed period, correctly fill up, or cause so to be filled up, to the best of his knowledge and belief, sign and lodge with the appropriate registration authority specified in the First Schedule, or such other registration authority as may be prescribed, the form set out in the Second Schedule, and if any such European British subject claims not to be ordinarily resident in India, he shall lodge with the said form a statement of such claim.

(2) If any registration authority has reason to believe that any person is a European British subject to whom the provisions of sub-section (1) are applicable, he may, by order in writing, require such person to furnish such particulars as may be specified in the order within such time as may be so specified, and such person, whether or not he is a European British subject to whom the provisions of the said sub-section are applicable, shall within the specified time furnish correctly to the best of his knowledge and belief the said particulars to the said registration authority in such form or manner as such order may require, and shall sign the same; and if any such person claims that he is not a European British subject to whom the provisions of sub-section (1) are applicable, he shall furnish a statement of such claim with the particulars as aforesaid.

(3) If any person refuses or, without lawful excuse (the burden of proving which shall lie upon such person), neglects fully to comply with the requirements of sub-section (1) or of any order made under sub-section (2), he shall be punishable with fine which may extend to five hundred rupees.

(4) Every

of 1860. (4) Every registration authority under this Act shall be deemed to be a public servant within the meaning of the Indian Penal Code.

4. If any question arises with reference to this Act or any rule made thereunder whether a person is a European British subject to whom the provisions of sub-section (1) of section 3 are applicable, a person appointed in writing in this behalf by the prescribed authority may apply to the District Magistrate or to any officer specially empowered in this behalf by the Central Government in the area in which the person to whom the dispute relates is for the time being present, and such Magistrate or other officer, after hearing such person or giving him a reasonable opportunity for being heard, shall summarily determine the question, and the decision of such Magistrate or other officer shall be final.

Determination  
of disputes as  
to applicability  
of this Act.

5. (1) The Central Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

Power of  
Central Gov-  
ernment to  
make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe registration authorities, in addition to those specified in the First Schedule;
- (b) prescribe the time within which the form set out in the Second Schedule shall be lodged with the registration authority;
- (c) prescribe authorities who may make the appointment referred to in section 4;
- (d) provide for the issue of certificates of registration;
- (e) provide for the preparation, compilation and correction of a register, and require the attendance of persons for any of such purposes;
- (f) require the notification of changes of address of registered persons.

(3) Rules made under this section may provide that any contravention thereof or of any order or notice issued thereunder shall be punishable with fine which may extend to five hundred rupees.

6. Nothing



Act not to  
apply to  
certain  
persons.

Repeal of  
Ordinance II  
of 1939.

6. Nothing in this Act shall apply to any person confined for the time being in a prison or lunatic asylum.

7. The Registration Ordinance, 1939, is hereby repealed ; but any rules made, anything done and any action taken under the said Ordinance shall be deemed to have been made, done or taken under the corresponding provisions of this Act, and any offence committed against or any proceedings commenced under the said Ordinance, may be punished, or may be continued and completed as if such offence were committed against or such proceedings were commenced under this Act.

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THE FIRST SCHEDULE.

OF 1940.] *Registration (Emergency Powers).*

## THE FIRST SCHEDULE.

(See section 3.)

### *Registration Authorities.*

In the case of any servant of the Crown.	The Head of the Office or Department in which he serves.
In the case of any person in the employ of any public or local authority.	The chief executive officer of such authority.
In the case of any person in the employ of any railway.	The Head of the Railway Administration.
In any other case . . .	The District Magistrate of the district in which the person is for the time being resident, or in the case of a person resident in a Presidency-town, the Commissioner of Police.

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## THE SECOND SCHEDULE.

THE SECOND SCHEDULE.

(See section 3.)

*Form of Particulars.*

1. Name in full.
2. Address.
3. Date of birth.
4. Whether single, married or widower.
5. Number of dependents, specifying their relationship, if any, to him.
6. Profession or occupation.
7. Name and nature of business, *or* name, address and nature of employer's business, *or* if employed in or under any Department of Government, the name of the Department.
8. Whether he has served, or undergone training of any description, in any naval, military or air force. If so, give particulars of such service or training including date and duration thereof.
9. Whether he possesses, or has possessed, a flying licence.

# ACT No. II OF 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the  
23rd February, 1940.)

**An Act to provide for the imposition of restrictions on  
foreigners.**

**W**HEREAS it is expedient to provide for the imposition of restrictions on the entry of foreigners into British India, their presence therein and their departure therefrom ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Foreigners Act, 1940. Short title,  
extent and  
duration.

(2) It extends to the whole of British India.

(3) It shall be in force during the continuance of the present war and for a period of six months thereafter.

2. In this Act,—

*Definitions.*

(a) “ foreigner ” has the meaning assigned to it in the Foreigners Act, 1864, except that it does not include—

(i) any ruler or subject of any Indian State ; or

(ii) any native of the tribal areas ;

(b) “ prescribed ” means prescribed by orders made under this Act ;

(c) “ specified ” means specified by direction of a prescribed authority.

3. (1) The Central Government may, by order, make provision, either generally with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into British India or their departure therefrom or their presence or continued presence therein. Power to make  
orders.

(2) In

(2) In particular, and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner—

- (a) shall not enter British India, or shall enter British India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed ;
- b) shall not depart from British India, or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed ;
- (c) shall not remain in British India, or in any prescribed area therein ;
- (d) shall remove himself to, and remain in, such area in British India as may be prescribed ;
- (e) shall comply with such conditions as may be prescribed or specified—
  - (i) requiring him to reside in a particular place ;
  - (ii) imposing any restrictions on his movements ;
  - (iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified ;
  - (iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his hand-writing and signature to such authority and at such time and place as may be prescribed or specified ;
  - (v) prohibiting him from association with persons of a prescribed or specified description ;
  - (vi) prohibiting him from engaging in activities of a prescribed or specified description ;
  - (vii) prohibiting him from using or possessing prescribed or specified articles ; or
  - (viii) otherwise

(viii) otherwise regulating his conduct in any such particular as may be prescribed or specified ;

(f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions ; or

(g) shall be arrested and detained or confined ;

and may make provision for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.

4. (1) Any foreigner (hereinafter referred to as an *Internee*, in respect of whom there is in force any order made under clause (g) of sub-section (2) of section 3, directing that he be detained or confined, shall be detained or confined in such place and manner and subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time determine.

(2) No person shall—

(a) knowingly assist an internee to escape from custody or knowingly harbour an escaped internee ; or

(b) give an escaped internee any assistance with intent thereby to prevent, hinder or interfere with the apprehension of the internee.

(3) The Central Government may, by order, provide for regulating access to, and the conduct of persons in, places in British India where internees are detained and for prohibiting or regulating the despatch or conveyance from outside such places to or for internees therein of such articles as may be prescribed.

(4) No proceedings shall be taken by virtue of sub-section (2) or sub-section (3) against any person in respect of any act done by him when he is himself an internee.

5. (1) No foreigner who was in British India on the date on which this Act came into force shall, while in <sup>Change of name.</sup> British

British India after that date, assume or use or purport to assume or use for any purpose any name other than that by which he was ordinarily known immediately before the said date.

(2) Where, after the date on which this Act came into force, any foreigner carries on or purports to carry on (whether alone or in association with any other person) any trade or business under any name or style other than that under which that trade or business was being carried on immediately before the said date, he shall, for the purposes of sub-section (1), be deemed to be using a name other than that by which he was ordinarily known immediately before the said date.

(3) In relation to any foreigner who, not having been in British India on the date on which this Act came into force, thereafter enters British India, sub-sections (1) and (2) shall have effect as if for any reference in those sub-sections to the date on which this Act came into force there were substituted a reference to the date on which he first enters British India thereafter.

(4) For the purposes of this section—

- (a) the expression “ name ” includes a surname, and
- (b) a name shall be deemed to be changed if the spelling thereof is altered.

(5) Nothing in this section shall apply to the assumption or use—

- (a) of any name in pursuance of a Royal licence ; or
- (b) by any married woman, of her husband's name.

Obligations of  
masters of  
vessels, etc.

6. Any District Magistrate and any Commissioner of Police or, where there is no Commissioner of Police, any Superintendent of Police, may, for any purpose connected with the enforcement of this Act or any order made thereunder, enter, with such assistance as he may think fit, any vessel or aircraft at any port or place in British India and may—

- (a) direct the master of the vessel or the pilot of the aircraft, as the case may be,—
  - (i) before any passenger disembarks, or before the vessel or aircraft leaves such port or place,

place, as the case may be, to furnish a list in writing of the passengers who are on board or who have been carried on board at any time since the vessel or aircraft commenced its journey, or who have signified their intention of departing from British India on board such vessel or aircraft, setting out the ports or places at which they embarked, the ports or places of their disembarkation or intended disembarkation, and such other particulars as may be prescribed, and

- (ii) to answer to the best of his ability any question relating to the passengers who are on board or who have disembarked in any part of British India ; and
- (b) if any foreigner seeking to enter British India on board such vessel or aircraft does not give satisfactory reasons for entering British India, either—
  - (i) refuse to allow such foreigner to disembark from such vessel or aircraft, or
  - (ii) place him under such restraint as may be prescribed or specified.

7. If any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872, lie upon such person.

1872.

8. The Central Government may, by order, declare that any or all of the provisions of this Act or the orders made thereunder shall not apply, or shall apply only with such modifications or subject to such conditions as may be specified, to or in relation to any individual foreigner or any class or description of foreigner.

9. (1) Any authority empowered by or under or in pursuance of the provisions of this Act to give any direction or to exercise any other power, may, in addition to

any



any other action expressly provided for in this Act, take, or cause to be taken, such steps and use, or cause to be used, such force as may, in its opinion, be reasonably necessary for securing compliance with such direction or for preventing or rectifying any breach thereof, or for the effective exercise of such power, as the case may be.

(2) Any police officer may take such steps and use such force as may, in his opinion, be reasonably necessary for securing compliance with any order made or direction given under or in pursuance of the provisions of this Act or for preventing or rectifying any breach of such order or direction.

(3) The power conferred by this section shall be deemed to confer upon any person acting in exercise thereof a right of access to any land or other property whatsoever.

Power to delegate authority.

10. Any authority upon which any power to make or give any direction, consent or permission or to do any other act is conferred by this Act or by any order made thereunder may, unless express provision is made to the contrary, in writing authorise, conditionally or otherwise, any authority subordinate to it to exercise such power on its behalf, and thereupon the said subordinate authority shall, subject to such conditions as may be contained in the authorisation, be deemed to be the authority upon which such power is conferred by or under this Act.

Attempts, etc., to contravene the provisions of this Act, etc.

11. (1) Any person who attempts to contravene, or abets, or attempts to abet, or does any act preparatory to, a contravention of, the provisions of this Act or of any order made or direction given thereunder, or fails to comply with any direction given in pursuance of any such order, shall be deemed to have contravened the provisions of this Act.

(2) Any person who, knowing or having reasonable cause to believe that any other person has contravened the provisions of this Act or of any order made or direction given thereunder, gives that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said contravention, shall be deemed to have abetted that contravention.

(3) The

(3) The master of any vessel or the pilot of any aircraft, as the case may be, by means of which any foreigner enters or leaves British India in contravention of any order made under, or direction given in pursuance of, section 3 shall, unless he proves that he exercised all due diligence to prevent the said contravention, be deemed to have contravened this Act.

12. If any person contravenes the provisions of this <sup>Penalties.</sup> Act or of any order made thereunder, or any direction given in pursuance of this Act or such order, he shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine ; and if such person has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting Court why such penalty should not be paid.

13. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in <sup>Protection to persons acting under this Act.</sup> good faith done or intended to be done under this Act.

14. The provisions of this Act shall be in addition to, <sup>Application of other laws not barred.</sup> and not in derogation of, the provisions of the Foreigners Act, 1864, the Registration of Foreigners Act, 1939, and of any other enactment for the time being in force.

III of 1864.  
XVI of 1939.

I of 1939.

15. (1) The Foreigners Ordinance, 1939, is hereby <sup>Repeal and saving.</sup> repealed.

(2) Notwithstanding such repeal, all orders made, directions given, things done and action taken under the said Ordinance, shall be deemed to have been made, given, done or taken under the provisions of this Act as if this Act had come into force on the 26th day of August, 1939, references to the said Ordinance in any rule made under any enactment shall be construed as references to this Act, and offences committed against or proceedings commenced under the said Ordinance may be punished or may be continued and completed as if such offences were committed against or such proceedings were commenced under this Act.



# ACT No. III OF 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on the  
23rd February, 1940.)*

**An Act to provide for the retention in service of certain persons enrolled for service in the Royal Indian Navy.**

**W**HEREAS it is expedient to provide for the retention in service of certain persons enrolled for service in the Royal Indian Navy ;

It is hereby enacted as follows :—

1. This Act may be called the Royal Indian Navy Short title.  
(Extension of Service) Act, 1940.

2. (1) Until such date as may be notified by the Central Government as the date of termination of the present hostilities, any person enrolled for service in the Royal Indian Navy who, by reason of the expiry of the term for which he engaged to serve when so enrolled, is no longer liable for service shall, notwithstanding such expiry, continue to be enrolled for service and to be liable for service in the Royal Indian Navy until he is discharged by order of the Officer Commanding the Royal Indian Navy : Extension of service where term of service has expired.

Provided that the period for which the service of any such person is extended under this section shall not exceed five years from the day on which his service would otherwise have terminated.

(2) The provisions of this section shall apply also to any person enrolled for service in the Royal Indian Navy if the expiry of the term for which he engaged to serve occurred between the 2nd day of September, 1939, and the commencement of this Act.

*Price anna 1 or 1½d.*



# ACT No. IV OF 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the  
23rd February, 1940.)

An Act to extend the operation of the criminal law to offences committed on ships or aircraft registered in British India wherever they may be.

WHEREAS it is expedient to extend the operation of the criminal law to offences committed on ships or aircraft registered in British India wherever they may be, and for that purpose further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898 ;

XLV of 1860.  
of 1898.

It is hereby enacted as follows :—

1. This Act may be called the Offences on Ships and Aircraft Act, 1940. Short title.

2. In section 4 of the Indian Penal Code, after clause (3) the following clause shall be inserted, namely :— Amendment of section 4 of Act XLV of 1860.

“(4) any person on any ship or aircraft registered in British India wherever it may be.”

3. In section 188 of the Code of Criminal Procedure, 1898, after the words “ Prince or Chief in India ”, where they occur for the second time, the following words shall be inserted, namely :— Amendment of section 188 of Act V of 1898.

“ or

when any person commits an offence on any ship or aircraft registered in British India wherever it may be, ”.

*Price anna 1 or 1½d.*

GIPD—505 LD—6.4.40—5,000.



GOVERNMENT OF INDIA.  
LEGISLATIVE DEPARTMENT.

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# THE TRADE MARKS ACT, 1940

(V OF 1940).

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# THE TRADE MARKS ACT, 1940.

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# ACT No. V OF 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on the  
11th March, 1940.)*

## **An Act to provide for the registration and more effective protection of Trade Marks.**

**W**HEREAS it is expedient to provide for the registration and more effective protection of trade marks ;

It is hereby enacted as follows :—

### CHAPTER I.

#### PRELIMINARY.

1. (1) This Act may be called the Trade Marks Act, 1940. Short title,  
extent and  
commencement

(2) It extends to the whole of British India.

(3) This section and section 85 shall come into force at once ; the remaining provisions of the Act shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

2. (1) In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(a) “ associated trade marks ” means trade marks deemed to be, or required to be registered as, associated trade marks under this Act ;

(b) “ certification trade mark ” means a mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic,

characteristic, from goods not so certified and registrable as such under the provisions<sup>s</sup> of Chapter VIII in respect of those goods in the name, as proprietor of the certification trade mark, of that person ;

- (c) " District Court " has the meaning assigned to it in the Code of Civil Procedure, 1908 ; V of 1908.
- (d) " High Court " means a High Court as defined in sub-section (1) of section 219 of the Government of India Act, 1935 ; 26 Geo. 5,  
ch. 2.
- (e) " limitations " (with its grammatical variations) means any limitations of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to mode of use, as to use in relation to goods to be sold or otherwise traded in within British India, or as to use in relation to goods to be exported to any market outside British India ;
- (f) " mark " includes a device, brand, heading, label, ticket, name, signature, word, letter or numeral or any combination thereof ;
- (g) " permitted use " means the use of a trade mark by a registered user thereof in relation to goods with which he is connected in the course of trade and in respect of which for the time being the trade mark remains registered and he is registered as a registered user, being use such as to comply with any conditions or restrictions to which his registration is subject ;
- (h) " prescribed " means prescribed by rules made, in relation to proceedings before a High Court, by such High Court, and in other cases, by the Central Government ;
- (i) " registered " (with its grammatical variations) means registered under this Act ;
- (j) " registered trade mark " means a trade mark which is actually on the register ;
- (k) " registered

- (k) "registered user" means a person who is for the time being registered as such under section 41 ;
- (l) "trade mark" means a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark whether with or without any indication of the identity of that person ;
- (m) "transmission" means transmission by operation of law, devolution on the personal representative of a deceased person and any other mode of transfer, not being assignment ;
- (n) "tribunal" means the Registrar or, as the case may be, the Court before which the proceeding concerned is pending.

(2) References in this Act to the use of a mark shall be construed as references to the use of a printed or other visual representation of the mark, and references herein to the use of a mark in relation to goods shall be construed as references to the use thereof upon, or in any other relation whatsoever to, such goods.

3. The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force. Application of other laws not barred.

## CHAPTER II.

### THE REGISTER AND CONDITIONS FOR REGISTRATION.

4. (1) For the purposes of this Act there shall be established at the Patent Office a Trade Mark Registry, and a record called the Register of Trade Marks (in this Act referred to as the register) shall be kept thereat wherein shall be entered all registered trade marks with the names, addresses and descriptions of their proprietors, notifications of assignments and transmissions, the names, addresses and descriptions of registered users,

The register of trade marks.



users, disclaimers, conditions, limitations, and such other matters relating to registered trade marks as may be prescribed, but there shall not be entered in the register any notice of any trust express, implied or constructive, nor shall any such notice be receivable by the Registrar.

(2) Subject to the superintendence and direction of the Central Government, the register shall be kept under the control and management of the Controller of Patents and Designs, who shall for the purposes of this Act be called the Registrar of Trade Marks and is in this Act referred to as the Registrar.

(3) The register shall at all convenient times be open to the inspection of the public, subject to such conditions and restrictions as may be prescribed.

Registration to  
be in respect of  
particular  
goods.

5. (1) A trade mark may be registered only in respect of particular goods or classes of goods.

(2) Any question arising as to the class within which any goods fall shall be determined by the Registrar whose decision in the matter shall be final.

Distinctiveness  
requisite for  
registration.

6. (1) A trade mark shall not be registered unless it contains or consists of at least one of the following essential particulars, namely :—

- (a) the name of a company, individual, or firm, represented in a special or particular manner ;
- (b) the signature of the applicant for registration or some predecessor in his business ;
- (c) one or more invented words ;
- (d) one or more words having no direct reference to the character or quality of the goods, and not being, according to its ordinary signification, a geographical name or surname or the name of a sect, caste or tribe in India ;
- (e) any other distinctive mark, provided that a name, signature, or any word, other than such as fall within the descriptions in the above clauses, shall not be registrable except upon evidence of its distinctiveness.

(2) For

(2) For the purposes of this section, the expression "distinctive" means adapted, in relation to the goods in respect of which a trade mark is proposed to be registered, to distinguish goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connection subsists, either generally or, where the trade mark is proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(3) In determining whether a trade mark is adapted to distinguish as aforesaid, the tribunal may have regard to the extent to which—

- (a) the trade mark is inherently so adapted to distinguish, and
- (b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact so adapted to distinguish :

Provided that in the case of a trade mark which has been continuously used (either by the applicant for registration or by some predecessor in his business, and either in its original form or with additions or alterations not substantially affecting its identity) in relation to the same goods as those in relation to which registration is applied for, during a period from a date prior to the 25th day of February, 1937, to the date of application for registration, the Registrar shall not refuse registration by reason only of the fact that the trade mark is not adapted to distinguish as aforesaid, and may accept evidence of acquired distinctiveness as entitling the trade mark to registration.

7. (1) A trade mark may be limited wholly or in part to one or more specified colours, and any such limitation shall be taken into consideration by any tribunal having to decide on the distinctive character of the trade mark.

Limitation as to colour.

(2) So far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

8. No

Prohibition of  
registration of  
certain matter.

8. No trade mark nor part of a trade mark shall be registered which consists of, or contains, any scandalous design, or any matter the use of which would—

- (a) by reason of its being likely to deceive or to cause confusion or otherwise, be disentitled to protection in a Court of justice ;  
or
- (b) be likely to hurt the religious susceptibilities of any class of His Majesty's subjects ;  
or
- (c) be contrary to any law for the time being in force or to morality.

Use of names  
of chemical  
elements  
barred.

9. No word which is the commonly used and accepted name of any single chemical element or single chemical compound (as distinguished from a mixture) shall be registered as a trade mark in respect of a chemical substance or preparation, and any such registration shall, notwithstanding anything in section 24, be deemed for the purposes of section 46 to be an entry made in the register without sufficient cause or an entry wrongly remaining on the register, as the circumstances may require :

Provided that this section shall not apply to a word which is used to denote only a brand or make of the element or compound as made by the proprietor or a registered user of the trade mark, as distinguished from the element or compound as made by others, and in association with a suitable name or description open to the public use.

Prohibition  
of registra-  
tion of  
identical  
or similar  
trade mark.

10. (1) Save as provided in sub-section (2), no trade mark shall be registered in respect of any goods or description of goods which is identical with a trade mark belonging to a different proprietor and already on the register in respect of the same goods or description of goods, or which so nearly resembles such trade mark as to be likely to deceive or cause confusion.

(2) In case of honest concurrent use or of other special circumstances which, in the opinion of the Registrar, make it proper so to do he may permit the registration by more than one proprietor of trade marks which  
are

are identical or nearly resemble each other in respect of the same goods or description of goods, subject to such conditions and limitations, if any, as the Registrar may think fit to impose.

(3) Where separate applications are made by different persons to be registered as proprietors respectively of trade marks which are identical or nearly resemble each other, in respect of the same goods or description of goods, the Registrar may refuse to register any of them until their rights have been determined by a competent Court.

11. (1) Where the proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, he may apply to register the whole and the part as separate trade marks. Registration of parts of trade marks and of trade marks as a series.

(2) Each such separate trade mark shall satisfy all the conditions applying to, and have all the incidents of, an independent trade mark.

(3) Where a person claiming to be the proprietor of several trade marks in respect of the same goods or description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

- (a) statements of the goods in relation to which they are respectively used or proposed to be used ; or
- (b) statements of number, price, quality, or names of places ; or
- (c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark ; or
- (d) colour ;

seeks to register those trade marks, they may be registered as a series in one registration.

12. (1) Where a trade mark which is registered, Associated trade marks. or is the subject of an application for registration, in respect of any goods is identical with another trade mark which is registered, or is the subject of an application for registration, in the name of the same proprietor

in respect of the same goods or description of goods, or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar may at any time require that the trade marks shall be entered on the register as associated trade marks.

(2) Where a trade mark and any part thereof are, in accordance with the provisions of sub-section (1) of section 11, registered as separate trade marks in the name of the same proprietor, they shall be deemed to be, and shall be registered as, associated trade marks.

(3) All trade marks registered in accordance with the provisions of sub-section (3) of section 11 as a series in one registration shall be deemed to be, and shall be registered as, associated trade marks.

(4) On application made in the prescribed manner by the registered proprietor of two or more trade marks registered as associated trade marks, the Registrar may dissolve the association as respects any of them if he is satisfied that there would be no likelihood of deception or confusion being caused if that trade mark were used by any other person in relation to any of the goods in respect of which it is registered, and may amend the register accordingly.

Registration  
subject to  
disclaimer.

13. If a trade mark contains—

(a) any part not separately registered as a trade mark in the name of the proprietor, or for the separate registration of which no application has been made, or

(b) any matter common to the trade, or otherwise of a non-distinctive character,

the tribunal, in deciding whether the trade mark shall be entered or shall remain on the register, may require, as a condition of its being on the register, that the proprietor shall either disclaim any right to the exclusive use of such part or of all or any portion of such matter, as the case may be, to the exclusive use of which the tribunal holds him not to be entitled, or make such other disclaimer as the tribunal may consider necessary for the purpose of defining the rights of the proprietor under the registration :

Provided

Provided that no disclaimer shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

### CHAPTER III.

#### PROCEDURE FOR, AND DURATION OF, REGISTRATION.

14. (1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of registering it shall apply in writing to the Registrar in the prescribed manner, and subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may think fit.

Application  
for registra-  
tion.

(2) In the case of a refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving thereat.

(3) The tribunal may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as it may think fit.

15. (1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted, together with the conditions and limitations, if any, subject to which it has been accepted, to be advertised in the prescribed manner :

Opposition to  
registration.

Provided that the Registrar may cause an application to be advertised before acceptance if it relates to a trade mark to which clause (e) of sub-section (1) of section 6 applies, or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do, and where an application has been so advertised the Registrar may, if he thinks fit, advertise it again when it has been accepted, but shall not be bound so to do.

(2) Any

(2) Any person may, within the prescribed time from the date of the advertisement of an application, give notice in writing in the prescribed manner to the Registrar of opposition to the registration.

(3) The Registrar shall serve in the prescribed manner a copy of the notice on the applicant, and within the prescribed time the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement, the Registrar shall serve in the prescribed manner a copy thereof on the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(5) If a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice, or an appellant against any order of the Registrar under section 14 or this section, neither resides nor carries on business in British India, the tribunal may require him to give security for costs of the proceedings before it, and in default of such security being duly given may treat the opposition or application or appeal, as the case may be, as abandoned.

**Registration.**

16. (1) When an application for registration of a trade mark has been accepted and either has not been opposed and the time for notice of opposition has expired, or having been opposed, has been decided in favour of the applicant, the Registrar shall, unless the application has been accepted in error, or unless the Central Government otherwise directs, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the making of the said application, and that date shall, subject to any directions made under section 83 applicable to such trade mark, be deemed for the purposes of this Act to be the date of registration.

(2) On

(2) On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof sealed with the seal of the Patent Office.

(3) Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

17. (1) Save as provided in sub-section (2), nothing in this Act shall authorise the registration of two or more persons who use a trade mark independently, or propose so to use it, as joint proprietors thereof. Jointly owned trade marks.

(2) Where the relations between two or more persons interested in a trade mark are such that no one of them is entitled as between himself and the other or others of them to use it except—

(a) on behalf of both or all of them, or

(b) in relation to an article with which both or all of them are connected in the course of trade,

those persons may be registered as joint proprietors of the trade mark, and this Act shall have effect in relation to any rights to the use of the trade mark vested in those persons as if those rights had been vested in a single person.

18. (1) The registration of a trade mark shall be for a period of seven years, but may be renewed from time to time in accordance with the provisions of this section. Duration and renewal of registration.

(2) The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of the trade mark for a period of fifteen years from the date of expiration of the original registration or of the last renewal of registration, as the case may be (which date is in this section referred to as "the expiration of the last registration").

(3) At  
15



(3) At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained, and if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with the Registrar may remove the trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

Effect of  
removal  
from register  
for failure  
to pay fee  
for renewal.

19. Where a trade mark has been removed from the register for failure to pay the fee for renewal, it shall nevertheless, for the purpose of any application for the registration of another trade mark during one year next after the date of the removal, be deemed to be a trade mark already on the register, unless the tribunal is satisfied either—

- (a) that there has been no *bona fide* trade use of the trade mark which has been removed during the two years immediately preceding its removal ; or
- (b) that no deception or confusion would be likely to arise from the use of the trade mark which is the subject of the application for registration by reason of any previous use of the trade mark which has been removed.

## CHAPTER IV.

### EFFECT OF REGISTRATION.

No action for  
infringement  
of unregistered  
trade mark.

20. (1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trade mark unless such trade mark has been continuously in use since before the 25th day of February, 1937, by such person or by a predecessor in title of his and unless an application for its registration, made within five years from the commencement of this Act, has been refused ; and the

Registrar

Registrar shall, on application in the prescribed manner, grant a certificate that such application has been refused.

(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

21. Subject to the provisions of sections 22, 25 and 26, the registration of a person in the register as proprietor of a trade mark in respect of any goods shall, if valid, give to that person the exclusive right to the use of the trade mark in relation to those goods and, without prejudice to the generality of the foregoing provision, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof using by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either—

Right conferred by registration.

(a) as being use as a trade mark ; or

(b) to import a reference to some person having the right either as a proprietor or as registered user to use the trade mark or to goods with which such a person as aforesaid is connected in the course of trade.

22. (1) The right to the use of a trade mark given under section 21 by registration shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in, in any place, or in relation to goods to be exported to any market, or in any other circumstances, to which, having regard to any such limitations, the registration does not extend.

No infringement in certain circumstances

(2) The said right to the use of a trade mark shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(a) in relation to goods connected in the course of trade with the proprietor or a registered

user

user of the trade mark if, as to those goods or a bulk of which they form part, the proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark ; or

- (b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact a connection in the course of trade between any person and the goods.

(3) The use of a registered trade mark, being one of two or more registered trade marks which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration as aforesaid, shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

Registration  
to be *prima*  
*facie* evidence  
of validity.

23. In all legal proceedings relating to a registered trade mark, the fact that a person is registered as proprietor thereof shall be *prima facie* evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions thereof.

Registration  
to be conclusive  
as to  
validity  
after seven  
years.

24. In all legal proceedings relating to a registered trade mark, the original registration of the trade mark shall after the expiration of seven years from the date of such original registration be taken to be valid in all respects unless such registration was obtained by fraud, or unless the trade mark offends against the provisions of section 8.

25. Nothing

25. Nothing in this Act shall entitle the proprietor or a registered user of a registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior—

- (a) to the use of the first-mentioned trade mark in relation to those goods by the proprietor or a predecessor in title of his, or
- (b) to the registration of the first-mentioned trade mark in respect of those goods in the name of the proprietor or a predecessor in title of his,

whichever is the earlier, or to object (on such use being proved) to registration of that identical or nearly resembling trade mark in respect of those goods under sub-section (2) of section 10.

26. No registration of a trade mark shall interfere with any *bona fide* use by a person of his own name or that of his place of business, or of the name, or of the name of the place of business, of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods, not being a description that would be likely to be taken as importing any such reference as is mentioned in clause (b) of section 21 or in clause (b) of section 57.

27. (1) The registration of a trade mark shall not be deemed to have become invalid by reason only of any use after the date of the registration of any words which the trade mark contains or of which it consists as the name or description of an article or substance:

Provided that, if it is proved either—

- (a) that there is a well-known and established use of the said words as the name or description of the article or substance by a person or persons carrying on a trade therein, not being use in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark or (in the

case

case of a certification trade mark) goods certified by the proprietor ; or

- (b) that the article or substance has been manufactured under a patent in force at or granted after the commencement of this section, that a period of two years or more after the cesser of the patent has elapsed, and that the said words are the only practicable name or description of the article or substance,—

the provisions of sub-section (2) shall apply.

(2) Where the facts mentioned in clause (a) or clause (b) of the proviso to sub-section (1) are proved with respect to any words, then—

(a) for the purposes of any proceedings under section 46—

- (i) if the trade mark consists solely of such words, the registration of the trade mark, so far as regards registration in respect of the article or substance in question or of any goods of the same description, shall be deemed to be an entry wrongly remaining on the register ;

- (ii) if the trade mark contains such words and other matter, the tribunal, in deciding whether the trade mark shall remain on the register, so far as regards registration in respect of the article or substance in question and of any goods of the same description, may, in case of a decision in favour of its remaining on the register, require as a condition thereof that the proprietor shall disclaim any right to the exclusive use in relation to that article or substance and any goods of the same description, of such words, provided that no disclaimer shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made ;

(b) for

(b) for the purposes of any other legal proceedings relating to the trade mark,—

(i) if the trade mark consists solely of such words, all rights of the proprietor under this Act or any other law to the exclusive use of the trade mark in relation to the article or substance in question or to any goods of the same description, or

(ii) if the trade mark contains such words and other matter, all such rights of the proprietor to the exclusive use of such words, in such relation as aforesaid,

shall be deemed to have ceased on the date at which the use mentioned in clause (a) of the proviso to sub-section (1) first became well-known and established, or at the expiration of the period of two years mentioned in clause (b) of the said proviso.

## CHAPTER V.

### ASSIGNMENT AND TRANSMISSION.

28. The person for the time being entered in the register as proprietor of a trade mark shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power to assign the trade mark, and to give effectual receipts for any consideration for such assignment. Power of registered proprietor to assign and give receipts.

29. Notwithstanding anything in any other law to the contrary, a registered trade mark shall, subject to the provisions of this Chapter, be assignable and transmissible whether in connection with the goodwill of a business or not, and in respect either of all of the goods in respect of which it is registered or of some only of those goods. Assignability of registered trade marks.

30. An unregistered trade mark shall be assignable and transmissible whether in connection with the goodwill of a business or not : Assignability of unregistered trade marks.

Provided

Provided that, except in connection with the goodwill of a business, assignment or transmission shall be permissible only if—

- (a) at the time of assignment or transmission of the unregistered trade mark it is used in the same business as a registered trade mark, and
- (b) the registered trade mark is assigned or transmitted at the same time and to the same person as the unregistered trade mark, and
- (c) the unregistered trade mark relates to goods in respect of which the registered trade mark is assigned or transmitted.

Restrictions  
on assign-  
ment or  
transmission  
where multiple  
exclusive  
rights would  
be created.

31. (1) Notwithstanding anything in sections 29 and 30, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law, exclusive rights in more than one of the persons concerned to the use, in relation to the same goods or description of goods, of trade marks nearly resembling each other or of identical trade marks, if, having regard to the similarity of the goods and of the trade marks, the use of the trade marks in exercise of those rights would be likely to deceive or cause confusion :

Provided that an assignment or transmission shall not be deemed to be invalid under this sub-section if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, having regard to limitations imposed thereon, such as not to be exercisable by two or more of those persons in relation to goods to be sold, or otherwise traded in, within British India (otherwise than for export therefrom), or in relation to goods to be exported to the same market outside British India.

(2) The proprietor of a registered trade mark who proposes to assign it may submit to the Registrar in the prescribed manner a statement of case setting out the circumstances and the Registrar may issue to him a certificate stating whether, having regard to the similarity

similarity of the goods and of the trade marks referred to in the case, the proposed assignment would or would not be invalid under sub-section (1), and a certificate so issued shall, subject to appeal and unless it is shown that the certificate was obtained by fraud or misrepresentation, be conclusive as to the validity or invalidity under sub-section (1) of the assignment in so far as such validity or invalidity depends upon the facts set out in the case, but, as regards a certificate in favour of validity, only if application for the registration under section 35 of the title of the person becoming entitled is made within six months from the date on which the certificate is issued.

32. Notwithstanding anything in sections 29 and 30, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist whether under this Act or any other law, an exclusive right in one of the persons concerned to the use of the trade mark limited to use in relation to goods to be sold, or otherwise traded in, in any place in British India and an exclusive right in another of these persons to the use of a trade mark nearly resembling the first-mentioned trade mark or of an identical trade mark in relation to the same goods or description of goods limited to use in relation to goods to be sold, or otherwise traded in, in any other place in British India :

*Restrictions on assignment or transmission when exclusive rights would be created in different parts of British India.*

Provided that in any such case, on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or by a person who claims that a registered trade mark has been transmitted to him or to a predecessor in title of his since the commencement of this Act, the Registrar, if he is satisfied that in all the circumstances the use of the trade mark in exercise of the said rights would not be contrary to the public interest, may approve the assignment or transmission, and an assignment or transmission so approved shall not, unless it is shown that the approval was obtained by fraud or misrepresentation, be deemed to be invalid under this section or section 31 if application for the registration under section 35 of the title of the person becoming



becoming entitled is made within six months from the date on which the approval is given or, in the case of a transmission, was made before that date.

Conditions for assignment otherwise than in connection with the goodwill of a business.

33. Where an assignment in respect of any goods of a trade mark which is at the time of the assignment used in a business in those goods, is made after the commencement of this Act otherwise than in connection with the goodwill of that business, the assignment shall not take effect unless the assignee, not later than the expiration of six months from the date on which the assignment is made or within such extended period, if any, as the Registrar may allow, applies to the Registrar for directions with respect to the advertisement of the assignment, and advertises it in such form and manner and within such period as the Registrar may direct.

Conditions for assignment and transmission of certification trade marks and associated trade marks.

34. (1) A certification trade mark shall not be assignable or transmissible otherwise than with the consent of the Central Government, for which application shall be made in writing in the prescribed manner through the Registrar.

(2) Associated trade marks shall be assignable and transmissible only as a whole and not separately.

Registration of assignments and transmissions.

35. (1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall apply in the prescribed manner to the Registrar to register his title, and the Registrar shall on receipt of the application and on proof of title to his satisfaction, register him as the proprietor of the trade mark in respect of the goods in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the register.

(2) Except for the purposes of an appeal against a decision of the Registrar under sub-section (1) or of an application under section 46, a document or instrument in respect of which no entry has been made in the register in accordance with sub-section (1) shall not be admitted in evidence before any tribunal in proof of the title to a trade mark unless the tribunal otherwise directs.

CHAPTER VI.

## CHAPTER VI.

## USE OF TRADE MARKS AND REGISTERED USERS.

36. (1) No application for the registration of a trade mark in respect of any goods shall be refused, nor shall permission for such registration be withheld, on the ground only that it appears that the applicant does not use or propose to use the trade mark, if the Registrar is satisfied that a company is about to be formed and registered under the Indian Companies Act, 1913, and that the applicant intends to assign the trade mark to that company with a view to the use thereof in relation to those goods by the company.

Proposed use of trade mark by company to be formed.

VII of 1913.

(2) The tribunal may, in a case to which sub-section (1) applies, require the applicant to give security for the costs of any proceedings relative to any opposition or appeal, and in default of such security being duly given may treat the application as abandoned.

(3) Where in a case to which sub-section (1) applies, a trade mark in respect of any goods is registered in the name of an applicant who relies on intention to assign to a company, then, unless within such period as may be prescribed, or within such further period not exceeding six months as the Registrar may, on application being made to him in the prescribed manner, allow, the company has been registered as the proprietor of the trade mark in respect of those goods, the registration shall cease to have effect in respect thereof at the expiration of that period, and the Registrar shall amend the register accordingly.

37. (1) Subject to the provisions of section 38, a registered trade mark may be taken off the register in respect of any of the goods in respect of which it is registered on application in the prescribed manner by any person aggrieved to a High Court or to the Registrar, on the ground either—

a Removal from register and imposition of limitations on ground of non-use.

- (a) that the trade mark was registered without any *bona fide* intention on the part of the applicant for registration that it should be used in relation to those goods by him or, in a case to which the provisions of section 36

apply,

apply, by the company concerned, and that there has in fact been no *bona fide* use of the trade mark in relation to those goods by any proprietor thereof for the time being up to a date one month before the date of the application ; or

- (b) that up to a date one month before the date of the application, a continuous period of five years or longer elapsed during which the trade mark was registered and during which there was no *bona fide* use thereof in relation to those goods by any proprietor thereof for the time being :

Provided that, except where the applicant has been permitted under sub-section (2) of section 10 to register an identical or nearly resembling trade mark in respect of the goods in question or where the tribunal is of opinion that he might properly be permitted so to register such a trade mark, the tribunal may refuse an application made under clause (a) or clause (b) in relation to any goods, if it is shown that there has been, before the relevant date or during the relevant period, as the case may be, *bona fide* use of the trade mark by any proprietor thereof for the time being in relation to goods of the same description, being goods in respect of which the trade mark is registered.

(2) Where in relation to any goods in respect of which a trade mark is registered—

- (a) the circumstances referred to in clause (b) of sub-section (1) are shown to exist so far as regards non-use of the trade mark in relation to goods to be sold, or otherwise traded in, in a particular place in British India (otherwise than for export from British India), or in relation to goods to be exported to a particular market outside British India, and
- (b) a person has been permitted under sub-section (2) of section 10 to register an identical or nearly resembling trade mark in respect of those goods under a registration extending

to

to use in relation to goods to be so sold, or otherwise traded in, or in relation to goods to be so exported, or the tribunal is of opinion that he might properly be permitted so to register such a trade mark,

on application by that person in the prescribed manner to a High Court or to the Registrar, the tribunal may impose on the registration of the first-mentioned trade mark such limitations as it thinks proper for securing that that registration shall cease to extend to such use.

(3) An applicant shall not be entitled to rely for the purpose of clause (b) of sub-section (1) or of sub-section (2) on any non-use of a trade mark which is shown to have been due to special circumstances in the trade and not to any intention to abandon or not to use the trade mark in relation to the goods to which the application relates.

38. (1) Where a trade mark consisting of any invented word has become so well-known as respects any goods in relation to which it is registered and has been used, that the use thereof in relation to other goods would be likely to be taken as indicating a connection in the course of trade between those goods and a person entitled to use the trade mark in relation to the first-mentioned goods, then, notwithstanding that the proprietor registered in respect of the first-mentioned goods does not use or propose to use the trade mark in relation to those other goods and notwithstanding anything in section 37, the trade mark may on application in the prescribed manner by such proprietor be registered in his name in respect of those other goods as a defensive trade mark and, while so registered, shall not be liable to be taken off the register in respect of those goods under the said section.

Defensive  
registration  
of well-known  
trade marks.

(2) The registered proprietor of a trade mark may apply for the registration thereof in respect of any goods as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods otherwise than as a defensive trade mark, or may apply for the registration thereof in respect of any goods otherwise than as a defensive trade mark notwithstanding that

that it is already registered in his name in respect of those goods as a defensive trade mark, in lieu in each case of the existing registration.

(3) A trade mark registered as a defensive trade mark and that trade mark as otherwise registered in the name of the same proprietor shall, notwithstanding that the respective registrations are in respect of different goods, be deemed to be, and shall be registered as, associated trade marks.

(4) On application in the prescribed manner by any person aggrieved to a High Court or to the Registrar, the registration of a trade mark as a defensive trade mark may be cancelled on the ground that the requirements of sub-section (1) are no longer satisfied in respect of any goods in relation to which the trade mark is registered in the name of the same proprietor otherwise than as a defensive trade mark, or may be cancelled as respects any goods in relation to which it is registered as a defensive trade mark on the ground that there is no longer any likelihood that the use of the trade mark in relation to those goods would be taken as giving the indication mentioned in sub-section (1).

(5) The Registrar may at any time cancel the registration as a defensive trade mark of a trade mark of which there is no longer any registration in the name of the same proprietor otherwise than as a defensive trade mark.

(6) Except as otherwise expressly provided in this section, the provisions of this Act shall apply in respect of the registration of trade marks as defensive trade marks and of trade marks so registered as they apply in other cases.

Registered  
users.

39. (1) A person other than the proprietor of a trade mark may be registered as a registered user thereof in respect of all or any of the goods in respect of which it is registered (otherwise than as a defensive trade mark) and either with or without conditions or restrictions.

(2) The permitted use of a trade mark shall be deemed to be use by the proprietor thereof, and shall

be

be deemed not to be use by a person other than the proprietor, for any purpose for which such use is material under this Act or any other law.

40. (1) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof, and if the proprietor refuses or neglects to do so within three months after being so called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making the proprietor a defendant.

Power of registered user to take proceedings against infringement.

(2) Notwithstanding anything contained in any other law, a proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

41. (1) Where it is proposed that a person should be registered as a registered user of a trade mark, the proprietor and the proposed registered user shall make application in writing to the Registrar in the prescribed manner accompanied by an affidavit made by the proprietor, or by some person authorised to the satisfaction of the Registrar to act on his behalf,—

Application for registration as registered user.

(a) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restriction as to persons for whose registration as registered users application may be made ;

(b) stating the goods in respect of which registration is proposed ;

(c) stating any conditions or restrictions proposed with respect to the characteristics of the goods, to the mode or place of permitted use, or to any other matter ;

(d) stating

- (d) stating whether the permitted use is to be for a period or without limit of period, and, if for a period, the duration thereof;

and by such further documents, information or evidence as may be required by the Registrar or as may be prescribed.

(2) When the requirements of sub-section (1) have been complied with, if the Registrar is satisfied that in all the circumstances the use of the trade mark in respect of the proposed goods or any of them by the proposed registered user subject to any conditions or restrictions which the Registrar may think proper, would not be contrary to the public interest, the Registrar may register, subject as aforesaid, the proposed registered user as a registered user in respect of the goods as to which he is so satisfied.

(3) The Registrar shall refuse an application under this section if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.

(4) The Registrar shall, if so requested by an applicant, take steps for securing that information given for the purposes of an application under this section (other than matter entered in the register) is not disclosed to rivals in trade.

(5) The Registrar shall issue notice in the prescribed manner—

- (a) of the registration of a person as a registered user, to any other registered user of the trade mark ;
- (b) of an application under section 42, to the registered proprietor, and each registered user (not being the applicant), of the trade mark.

42. Without prejudice to the provisions of section 40, the registration of a person as a registered user—

- (a) may be varied by the Registrar as regards the goods in respect of which, or any conditions or restrictions subject to which, it has effect, on the application in writing in the prescribed

Power to Registrar to vary or cancel registration as registered user.

prescribed manner of the registered proprietor of the trade mark ;

(b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark ;

(c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, namely :—

(i) that the registered user has used the trade mark otherwise than by way of the permitted use, or in such a way as to cause or to be likely to cause, deception or confusion ;

(ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration ;

(iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested ;

(d) may be cancelled by the Registrar in respect of any goods in relation to which the trade mark is no longer registered.

43. Nothing in this Act shall confer on a registered user of a trade mark any assignable or transmissible right to the use thereof.

Registered user not to have right of assignment or transmission.

44. (1) Where under the provisions of this Act use of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as it shall think right, accept use of a registered associated trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the use required to be proved.

Use of one of associated or substantially identical trade marks equivalent to use of another.

(2) The



(2) The use of the whole of a registered trade mark shall for the purposes of this Act be deemed to be also a use of any trade mark being a part thereof and registered in accordance with sub-section (1) of section 11 in the name of the same proprietor.

Use of trade mark for export trade, and use when form of trade connection changes.

45. (1) The application in British India of a trade mark to goods to be exported from British India, and any other act done in British India in relation to goods to be so exported which, if done in relation to goods to be sold or otherwise traded in within British India would constitute use of a trade mark therein, shall be deemed to constitute use of the trade mark in relation to those goods for any purpose for which such use is material under this Act or any other law.

(2) The use of a registered trade mark in relation to goods between which and the person using the mark any form of connection in the course of trade subsists shall not be deemed to be likely to cause deception or confusion on the ground only that the mark has been or is used in relation to goods between which and the person using the mark or any predecessor in his business different form of connection in the course of trade subsisted or subsists.

## CHAPTER VII.

### RECTIFICATION AND CORRECTION OF THE REGISTER.

Power to cancel or vary registration and to rectify the register.

46. (1) On application in the prescribed manner by any person aggrieved to a High Court or to the Registrar, the tribunal may make such order as it may think fit for cancelling or varying the registration of a trade mark on the ground of any contravention of, or failure to observe a condition entered on the register in relation thereto.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in  
the

the prescribed manner to a High Court or to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as it may think fit.

(3) The tribunal may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register.

(4) A High Court or the Registrar, of its or his own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

(5) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

47. (1) The Registrar may, on application made in the prescribed manner by the registered proprietor,— Correction of register.

- (a) correct any error in the name, address or description of the registered proprietor of a trade mark ;
- (b) enter any change in the name, address or description of the person who is registered as proprietor of a trade mark ;
- (c) cancel the entry of a trade mark on the register ;
- (d) strike out any goods or classes of goods from those in respect of which a trade mark is registered ;
- (e) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of the trade mark.

(2) The Registrar may, on application made in the prescribed manner by a registered user of a trade mark, correct any error, or enter any change, in the name, address or description of the registered user.

48. (1) The

Alteration of  
Registered  
trade mark.

48. (1) The registered proprietor of a trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(3) Where leave is granted under this section, the trade mark as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (2).

Adaptation of  
entries in  
register to  
amended or  
substituted  
classification  
of goods.

49. (1) The Registrar shall not, in exercise of any power conferred on him under clause (a) of sub-section (2) of section 84, make any amendment of the register which would have the effect of adding any goods or classes of goods to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the amendment is to be made or of antedating the registration of a trade mark in respect of any goods :

Provided that this sub-section shall not apply when the Registrar is satisfied that compliance therewith would involve undue complexity and that the addition or antedating, as the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

(2) A proposal so to amend the register shall be notified to the registered proprietor of the trade mark affected and advertised in the prescribed manner, and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes the provisions of sub-section (1).

# CHAPTER VIII.

## CERTIFICATION TRADE MARKS.

50. Subject to the provisions of this Chapter, the other provisions of this Act except sections 6, 21, 22, 31, 32, 33, 36, 37, 38, 39, 40, 41, 42 and 43 and sub-section (2) of section 45 shall apply to certification trade marks as they apply to trade marks.

Provisions of this Act applicable to certification trade marks.

51. A mark shall not be registrable as a certification trade mark in the name of a person who carries on a trade in goods of the kind certified.

Certification trade mark not to be registered in name of person trading in goods certified thereby.

52. In determining whether a mark is adapted to distinguish in accordance with the provisions of clause (b) of sub-section (1) of section 2, the tribunal may have regard to the extent to which—

Determination whether a mark is a certification trade mark.

(a) the mark is inherently so adapted to distinguish in relation to the goods in question ; and

(b) by reason of the use of the mark or of any other circumstances, the mark is in fact so adapted to distinguish in relation to the goods in question.

53. (1) An application for the registration of a mark as a certification trade mark shall be made to the Registrar in writing in the prescribed manner by the person proposed to be registered as the proprietor thereof, and accompanied by a draft of the regulations to be deposited under section 56.

Application for registration.

(2) The provisions of section 14 shall have effect in relation to an application under this section as they have effect in relation to an application under the said section, except that for references therein to acceptance of an application there shall be substituted references to authorisation to proceed with the application.

(3) In dealing under the said provisions with an application under this section, the tribunal shall have regard to the like considerations, so far as relevant, as if the application were an application under section 14 and to any other considerations (not being matters within

within the competence of the Central Government under section 54) relevant to applications under this section, including the desirability of securing that a certification trade mark shall comprise some indication that it is a certification trade mark.

Consideration  
of application  
for registra-  
tion by  
Central  
Government.

54. When authorisation to proceed with an application under section 53 has been given, the Registrar shall forward the application to the Central Government who shall consider the application with regard to the following matters, namely :—

- (a) whether the applicant is competent to certify the goods in respect of which the mark is to be registered ;
- (b) whether the draft of the regulations to be deposited under section 56 is satisfactory ;
- (c) whether in all the circumstances the registration applied for would be to the public advantage ;

and may either—

- (i) direct that the application shall not be accepted ; or
- (ii) direct the Registrar to accept the application and approve the said draft of the regulations either without modification and unconditionally or subject to any conditions or limitations, or to any amendments or modification of the application or of the regulations, which it thinks requisite having regard to any of the said matters ;

but, except in the case of a direction for acceptance and approval without modification and unconditionally, the Central Government shall not decide the matter without giving to the applicant an opportunity of being heard :

Provided that the Central Government may, at the request of the applicant made with the concurrence of the Registrar, consider the application with regard to any of the said matters before authorisation to proceed with the application has been given, so however that the Central Government shall be at liberty to reconsider

any

any matter on which it has given a decision under this proviso if any amendment or modification is thereafter made in the application or in the draft of the regulations.

55. (1) When an application has been accepted, the Registrar shall, as soon as may be thereafter, cause the application as accepted to be advertised in the prescribed manner, and the provisions of section 15 shall have effect in relation to the registration of the mark as if the application had been an application under section 14 : Opposition to registration

Provided that, in deciding under the said provisions the tribunal shall have regard only to the considerations referred to in sub-section (3) of section 53, and a decision under the said provisions in favour of the applicant shall be conditional on the determination in his favour by the Central Government under sub-section (2) of this section of any opposition relating to any of the matters referred to in section 54.

(2) When notice of opposition is given relating to any of the matters referred to in section 54, the Central Government shall, after hearing the parties, if so required, and considering any evidence, decide whether, and subject to what conditions or limitations, or amendments or modifications, if any, of the application or of the regulations to be deposited under section 56, registration is, having regard to those matters, to be permitted.

56. (1) There shall be deposited at the Patent Office in respect of every mark registered as a certification trade mark regulations approved by the Central Government for governing the use thereof, which shall include provisions as to the cases in which the proprietor is to certify goods and to authorise the use of the certification trade mark, and may contain any other provisions which the Central Government may by general or special order require or permit to be inserted therein (including provisions conferring a right of appeal to the Registrar against any refusal of the proprietor to certify goods or to authorise the use of the certification trade mark in accordance with the regulations) ; and regulations so deposited shall be open to inspection in like manner as the register. Deposit of regulations governing the use of a certification trade mark.

(2) The regulations so deposited may on the application of the registered proprietor be altered by the Registrar with the consent of the Central Government.

(3) The Central Government may cause such application to be advertised in any case where it appears to it expedient so to do, and where it does so, if within the time specified in the advertisement any person gives notice of opposition to the application, the Central Government shall not decide the matter without giving the parties an opportunity of being heard.

Right conferred by registration.

57. Subject to the provisions of sections 25, 26 and 58, the registration of a person as proprietor of a certification trade mark in respect of any goods shall, if valid, give to that person the exclusive right to the use of the certification trade mark in relation to those goods, and, without prejudice to the generality of the foregoing provision, that right shall be deemed to be infringed by any person who, not being the proprietor of the mark or a person authorised by him in that behalf under the regulations deposited under section 56, using it in accordance therewith, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either—

(a) as being use as a certification trade mark ;  
or

(b) to import a reference to some person having the right either as proprietor, or by his authorisation under the said regulations, to use the mark, or to goods certified by the proprietor.

No infringement in certain circumstances.

58. (1) The right to the use of a certification trade mark given under section 57 by registration shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in in any place, in relation to goods to be exported to any market,

or

or in any other circumstances, to which having regard to any such limitations, the registration does not extend.

(2) The said right to the use of a certification trade mark shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(a) in relation to goods certified by the proprietor of the mark if, as to those goods or a bulk of which they form part, the proprietor or another in accordance with his authorisation under the relevant regulations has applied the mark and has not subsequently removed or obliterated it, or the proprietor has at any time expressly or impliedly consented to the use of the mark, or

(b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact that the goods are certified by the proprietor :

Provided that clause (a) shall not apply to the case of use consisting of the application of any such mark as aforesaid to any goods, notwithstanding that they are such goods as are mentioned in that clause if such application is contrary to the said regulations.

(3) Where a certification trade mark is one of two or more registered certification trade marks which are identical or nearly resemble each other, the use of any of those marks in exercise of the right to the use of that mark given by registration, shall not be deemed to be an infringement of the right so given to the use of any other of those marks.

59. (1) The Central Government may, on the application in the prescribed manner of any person aggrieved

Cancellation  
or varying  
of registra-  
tion.

or



or on the recommendation of the Registrar, and after giving the proprietor an opportunity of opposing the application or recommendation, make such order as it thinks fit for expunging or varying any entry in the register relating to a certification trade mark, or for varying the deposited regulations, on any of the following grounds, namely :—

- (a) that the proprietor is no longer competent, in the case of any of the goods in respect of which the mark is registered, to certify those goods ;
- (b) that the proprietor has failed to observe any provision of the deposited regulations to be observed on his part ;
- (c) that it is no longer to the public advantage that the mark should be registered ;
- (d) that it is requisite for the public advantage that, if the mark remains registered, the regulations should be varied ;

and neither a High Court nor the Registrar shall have any jurisdiction to make an order under section 46 on any of those grounds.

(2) The Registrar shall rectify the register and the deposited regulations in such manner as may be requisite for giving effect to an order made under sub-section (1).

Costs not to be awarded in certain cases.

60. The Registrar shall have no power to award costs to or against any party on an appeal to him against a refusal of the proprietor of a certification trade mark to certify goods or to authorise the use of the mark.

Decisions of Central Government to be final.

61. Save as otherwise expressly provided in this Chapter, every decision of the Central Government under this Chapter shall be final.

## CHAPTER IX.

### SPECIAL PROVISIONS FOR TEXTILE GOODS.

Textile goods.

62. The Central Government shall prescribe classes of goods (in this Chapter referred to as textile goods) to

to the trade marks used in relation to which the provisions of this Chapter shall apply ; and subject to the said provisions, the other provisions of this Act shall apply to such trade marks as they apply to trade marks used in relation to other classes of goods.

63. (1) There shall be established at Bombay, for the purpose of facilitating the registration of trade marks in respect of textile goods, a branch of the Trade Marks Registry. The officer in charge of the branch shall be called the Deputy Registrar.

Branch of  
Trade Marks  
Registry at  
Bombay  
and Textile  
Marks Record.

(2) There shall be kept at the said branch for the purposes of this Act a record called the Textile Marks Record wherein shall be entered copies of all entries in the register relating to trade marks registered in respect of textile goods and the said record shall at all convenient times be open to the inspection of the public subject to such conditions and restrictions as may be prescribed.

(3) Trade marks in respect of textile goods of which registration has been refused shall be entered in a list called the Refused Textile Marks List, a copy of which shall be kept at the said branch, and the list and the said copy shall at all convenient times be open to the inspection of the public, subject to such conditions and restrictions as may be prescribed.

64. In respect of textile goods being piece goods—

Restrictions  
on registra-  
tion of piece  
goods.

- (a) no mark consisting of a line heading alone shall be registrable as a trade mark ;
- (b) a line heading shall not be deemed to be adapted to distinguish ;
- (c) the registration of a trade mark shall not give any exclusive right to the use of a line heading ;
- (d) the registration of letters or numerals, or any combination thereof, shall be subject to such conditions and restrictions as may be prescribed.

65. (1) Applications for the registration of a trade mark in respect of textile goods may be made either to

Registration.

the

the Registrar or the Deputy Registrar at the option of the applicant.

(2) In respect of all trade marks, applications for registration of which are duly made to the Deputy Registrar under this chapter, the Deputy Registrar shall exercise all the powers of the Registrar under this Act but shall be subject to the general superintendence of the Registrar.

Advisory  
Committees.

66. (1) The Central Government may in the prescribed manner constitute one or more Advisory Committees of persons versed in the usages of the textile trade for the purpose of this section.

(2) The Registrar or the Deputy Registrar shall consult any such Committee with respect to any circumstances peculiar to the textile trade arising on an application to register a trade mark in respect of textile goods.

(3) The place of meeting and the conduct of business of such Committees shall be determined by rules made under this Act.

## CHAPTER X.

### OFFENCES AND RESTRAINT OF USE OF ROYAL ARMS AND STATE EMBLEMS.

Penalty for  
falsification  
of entries in  
register.

67. If any person makes, or causes to be made a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders, or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty for  
falsely  
representing  
a trade  
mark as  
registered.

68. (1) From such date, not being earlier than one year from the commencement of this Act, as the Central Government may, by notification in the official Gazette, appoint in this behalf, no person shall make any representation—

(a) with respect to a mark not being a registered trade mark, to the effect that it is a registered trade mark ; or

(b) with

- (b) with respect to a part of a registered trade mark not being a part separately registered as a trade mark, to the effect that it is separately registered as a trade mark ; or
- (c) to the effect that a registered trade mark is registered in respect of any goods in respect of which it is not in fact registered ; or
- (d) to the effect that the registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations entered on the register, the registration does not in fact give that right.

(2) If any person contravenes any of the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(3) For the purposes of this section, the use in British India in relation to a trade mark of the word “ registered ”, or of any other expression referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except—

- (a) where that word or other expression is used in direct association with other words delineated in characters at least as large as those in which that word or other expression is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside British India, being a country under the law of which the registration referred to is in fact in force ; or
- (b) where that other expression is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a) ; or
- (c) where that word is used in relation to a mark registered as a trade mark under the law

of a country outside British India and in relation solely to goods to be exported to that country.

Restraint  
of use of  
Royal Arms  
and State  
emblems.

69. If a person, without due authority, uses in connection with any trade, business, calling or profession—

- (a) the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or
- (b) any device, emblem or title in such manner as to be calculated to lead to the belief that he is employed by, or supplies goods to, or is connected with, His Majesty's Government or the Central Government or any Provincial Government or any department of any such Government,

he may, at the suit of any person who is authorised to use such Arms or such device, emblem or title or of the Registrar, be restrained by injunction from continuing so to use the same.

## CHAPTER XI.

### MISCELLANEOUS.

Procedure  
before the  
Registrar.

70. In all proceedings under this Act before the Registrar—

- (a) the Registrar shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses ;
- (b) evidence shall be given by affidavit, provided that the Registrar may, if he thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit ;
- (c) the

- (c) the Registrar shall not exercise any power vested in him by this Act or the rules made thereunder adversely to any party duly appearing before him without (if required in writing within the prescribed time so to do) giving such party an opportunity of being heard ;
- (d) the Registrar may, save as otherwise expressly provided in this Act, and subject to any rules made in this behalf under section 84, make such orders as to costs as he considers reasonable, and any such order shall be executable as a decree of a Civil Court.

71. In all proceedings under this Act before the Central Government, evidence shall be given by affidavit, provided that the Central Government may, if it thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit, and shall for that purpose have all the powers of a Civil Court referred to in clause (a) of section 70.

Procedure  
before  
Central  
Government.

72. Where under this Act an applicant has the option of making an application either to a High Court or to the Registrar,—

Procedure in  
certain cases  
of option to  
apply to a  
High Court  
or the  
Registrar.

- (a) if any suit or other proceedings concerning the trade mark in question is pending before a High Court or a District Court, the application shall be made to that High Court or, as the case may be, to the High Court within whose jurisdiction that District Court is situated ;
- (b) if in any other case the application is made to the Registrar, the Registrar may, if he thinks fit, refer the application at any stage of the proceedings to a High Court.

73. No suit for the infringement of a trade mark or otherwise relating to any right in a trade mark shall be instituted in any Court inferior to a District Court having jurisdiction to try the suit.

Suits for  
infringement  
to be insti-  
tuted before  
District  
Court.

74. (1) In any suit or other legal proceeding in which the relief sought includes alteration or rectification of

Appearance  
of Registrar  
in proceed-  
ings involving  
rectification  
of register.

the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the tribunal.

(2) Unless the tribunal otherwise directs, the Registrar may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue, or of the grounds of any decision given by him affecting it, or of the practice of the Patent Office in like cases, or of other matters relevant to the issues and within his knowledge as Registrar, and such statement shall be evidence in the suit or other proceeding.

(3) The costs of the Registrar shall be in the discretion of the tribunal, but the Registrar shall not be ordered to pay the costs of any of the parties.

Evidence of  
entries in  
register  
and things  
done by  
Registrar.

75. (1) A printed or written copy of any entry in the register, purporting to be certified by the Registrar and sealed with the seal of the Patent Office, shall be admitted in evidence in all Courts in British India and in all proceedings without further proof of production of the original.

(2) A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the contents thereof, or of the matter or thing having been done or not done.

Appeals.

76. (1) Save as otherwise expressly provided in this Act, an appeal shall lie, within the period prescribed by the Central Government, from any decision of the Registrar or Deputy Registrar under this Act or the rules made thereunder to the High Court having jurisdiction :

Provided that if any suit or other proceeding concerning the trade mark in question is pending before a High Court or a District Court, the appeal shall be made to that High Court or, as the case may be, to the High Court within whose jurisdiction that District Court is situated.

(2) In

(2) In an appeal by an applicant for registration against a decision of the Registrar under section 13 or section 14 or section 15, it shall not be open, save with the express permission of the Court, to the Registrar or any party opposing the appeal to advance grounds other than those recorded in the said decision or advanced by the party in the proceedings before the Registrar, as the case may be; and where any such additional grounds are advanced, the applicant for registration may, on giving notice in the prescribed manner, withdraw his application without being liable to pay the costs of the Registrar or the parties opposing his application.

1908.

(3) Subject to the provisions of this Act and of rules made thereunder, the provisions of the Code of Civil Procedure, 1908, shall apply to appeals before a High Court under this Act.

77. A High Court may make rules consistent with this Act as to the conduct and procedure of all proceedings under this Act before it. Power to High Courts to make rules.

78. If in any legal proceeding in which the validity of the registration of a trade mark comes into question, a decision is given in favour of the proprietor of the trade mark, the tribunal may grant a certificate to that effect, and if such a certificate is granted, then in any subsequent legal proceeding in which the said validity comes into question, the said proprietor on obtaining a final order or judgment in his favour shall, unless the said final order or judgment for sufficient reason directs otherwise, be entitled to his full costs, charges and expenses as between legal practitioner and client. Certificate of validity.

79. In any suit or other proceeding relating to a trade mark, the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark or get up legitimately used by other persons. Trade usage, etc., to be taken into consideration.

80. Where by or under this Act any act, other than the making of an affidavit, is required to be done by any person, the act may, subject to prescribed conditions or in special cases with the consent of the Central Government, be done, in lieu of by that person himself,



by a duly authorised agent, being either a legal practitioner or a person registered in the prescribed manner as a trade marks agent.

**Fees.**

**81.** There shall be paid in respect of applications and registration and other matters under this Act such fees as may be prescribed by the Central Government.

**Crown to be bound.**

**82.** The provisions of this Act shall be binding on the Crown.

**Power to make reciprocal arrangements with other Governments.**

**83.** If at any time after the expiry of six months from the commencement of this section it is made to appear to the Central Government that any Government outside British India has made satisfactory provision for the protection within its territories of trade marks in respect of which an application for registration has been made in British India, the Central Government may, by notification in the official Gazette, make provision with regard to trade marks in respect of which an application for registration has been made within the territories of that Government to enable any person who has applied within such territories for registration of a trade mark or his legal representative or assignee to obtain registration of the trade mark in British India under this Act on his making an application for registration in British India within such period as may be fixed in this behalf by the notification as if an application for registration under this Act had been made in respect of that trade mark at the date at which the application for registration was made within the territories of that Government.

**Power of Central Government to make rules.**

**84. (1)** The Central Government may, subject to the condition of previous publication by notification in the official Gazette, make rules to carry out the purposes of this Act.

**(2)** In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a)** prescribe the classification of goods for the purpose of the registration of trade marks, and empower the Registrar to amend the register so far as may be necessary for the purpose

purpose of adapting the entries therein to any amended or substituted classification which may be prescribed ;

- (b) require the making of duplicates of trade marks and other documents connected therewith ;
- (c) provide for securing and regulating the publication, sale or distribution of copies of trade marks and other documents connected therewith ;
- (d) prescribe additional matters to be entered in the register ;
- (e) prescribe the conditions and restrictions subject to which the register, the Textile Marks Record and the Refused Textile Marks List may be inspected ;
- (f) prescribe the form of certificates of registration ;
- (g) prescribe the conditions under which a trade mark removed from the register may be restored under sub-section (3) of section 18 ;
- (h) prescribe the further documents, information or evidence to accompany an application under sub-section (1) of section 41 ;
- (i) prescribe classes of goods as textile goods for the purposes of Chapter IX ;
- (j) provide for the constitution of Advisory Committees referred to in section 66, and prescribe the places of meeting, and conduct of business at meetings, of such Committees ;
- (k) regulate the awarding of costs by the Registrar under section 70 ;
- (l) prescribe the conditions subject to which an agent referred to in section 80 may act ;
- (m) prescribe the fees to be paid under this Act ;
- (n) provide for the establishment of branches of the Trade Marks Registry when expedient

for facilitating the working of this Act, and authorise the preparation of copies of the register to be kept at such branch offices ;

- (o) prescribe the manner in which, in proceedings under this Act before the Central Government or the Registrar, applications shall be made, notices given and matters advertised ;
- (p) prescribe times or periods required by this Act to be prescribed ;
- (q) provide, generally, for regulating the business of the Trade Marks Registry and of branches established under clause (n) or under section 63, and for regulating all things by this Act placed under the direction or control of the Central Government or the Registrar.

Power to  
Central  
Government  
to make  
provision for  
applications  
for registra-  
tion before the  
coming into  
force of the  
remaining  
provisions of  
Act.

85. The Central Government may, by notification in the official Gazette, provide such procedure as it considers expedient to enable intending applicants to deposit trade marks at the Patent Office before the coming into force of the remaining provisions of this Act :

Provided that the deposit of a trade mark under this section shall not affect any right, existing or accruing, in the trade mark.

# ACT No. VI OF 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on the  
11th March, 1940.)*

## An Act further to amend the Indian Coinage Act, 1906.

WHEREAS it is expedient further to amend the  
Indian Coinage Act, 1906, for the purpose  
hereinafter appearing ;

11 of 1906.

It is hereby enacted as follows :—

1. This Act may be called the Indian Coinage Short title.  
(Amendment) Act, 1940.

2. For section 5 of the Indian Coinage Act, 1906 Amendment of  
section 5 of Act  
III of 1906.  
(hereinafter referred to as the said Act), the following  
section shall be substituted, namely :—

“ 5. (1) The standard weight of the Government Standard  
weight and  
fineness.  
rupee shall be one hundred and eighty  
grains troy.

(2) The other silver coins shall be of propor-  
tionate weight.

(3) The standard fineness of the Government  
rupee shall be as follows, namely, eleven-  
twelfths, or one hundred and sixty-five  
grains of fine silver, and one-twelfth, or  
fifteen grains of alloy : of the half-rupee,  
eleven-twelfths, or eighty-two and a half  
grains of fine silver, and one-twelfth, or  
seven and a half grains of alloy : and of the  
quarter-rupee, one-half, or twenty-two and  
a half grains of fine silver, and one-half, or  
twenty-two and a half grains of alloy.

(4) In

*Indian Coinage (Amendment)* [ACT VI OF 1940]

(4) In the making of silver coins, a remedy shall be allowed of an amount not exceeding the following, namely :—

	Remedy in weight.	Remedy in fineness.
Rupee	Five-thousandths	Two-thousandths.
Half-rupee		
Quarter-rupee	Nine-thousandths	Five-thousandths.

and in applying the said remedies to quarter-rupees the remedies shall be applied to the average of one hundred coins and not to individual coins.”

Amendment of  
section 15, Act  
III of 1906.

3. To section 15 of the said Act the following subsection shall be added, namely :—

“(3) All quarter-rupee silver coins which may have been issued under this Act prior to the commencement of the Indian Coinage (Amendment) Act, 1940, shall continue to be a legal tender in payment or on account for any sum not exceeding one rupee at the rate of four for a rupee.”

# ACT No. VII OF 1940

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the  
11th March, 1940.)

**An Act to facilitate the changing of the date on which  
the annual accounts of the Reserve Bank of India  
are closed.**

**W**HEREAS it is expedient that certain provisions  
should be made to facilitate the changing of the  
date on which the annual accounts of the Reserve  
Bank of India are closed ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Reserve Bank <sup>Short title  
and extent</sup> of India (Closing of Annual Accounts) Act, 1940.

(2) It extends to the whole of British India.

2. In this Act “the Bank ” means the Reserve <sup>Definition.</sup>  
Bank of India constituted by the Reserve Bank of  
India Act, 1934.

934. 3. Notwithstanding anything to the contrary con-  
tained in the Reserve Bank of India Act, 1934, or the  
regulations made under section 58 thereof the Bank  
may, for the purpose of facilitating the changing of the  
date on which the annual accounts of the Bank are  
closed, close its accounts as at the close of business on  
the 30th day of June, 1940, and convene a general  
meeting (which shall be an annual general meeting  
within the meaning of the said Act) at a place where  
there is an office of the Bank within six weeks from the  
date on which the accounts are closed : <sup>Power to  
close accounts.  
at expiry  
of period of six  
months.</sup>

Provided that this general meeting shall not be  
held at the same place as that at which the imme-  
diately preceding annual general meeting was held.

4. References

*Price anna 1 or 1½d.*

*Reserve Bank of India (Closing of [ACT VII OF 1940.]  
Annual Accounts)*

Application of  
Act II of 1934  
when accounts  
are closed  
under section 3.

4. References in sub-section (2) of section 14, section 52 and sub-sections (2) and (3) of section 53 of the Reserve Bank of India Act, 1934, to annual accounts, annual balance-sheet, the auditors' report upon the annual balance-sheet and accounts, and the report of the Central Board on the working of the Bank throughout the year, shall be deemed to include references to the accounts, balance-sheet, auditors' report and the report of the Central Board in respect of a period of six months ending on the 30th day of June, 1940.

Interpretation  
of section 47,  
Act II of 1934.

5. For the purposes of section 47 of the Reserve Bank of India Act, 1934, the net profits of the Bank for the period of six months ending on the 30th day of June, 1940, shall be deemed to be "net annual profits" but the cumulative dividend referred to in that section as payable out of such profits shall be payable at the rate of one and three quarter per cent.

Power to  
make regula-  
tions.

6. The Central Board of Directors of the Bank may, with the previous sanction of the Central Government, make regulations to provide for any matter for which provision is necessary or convenient in connection with the changing of the date on which the annual accounts of the Bank are closed, and in particular and without prejudice to the generality of the foregoing power for the manner in which the amount, if any, of the additional dividend referred to in section 47 of the Reserve Bank of India Act, 1934, shall be calculated in respect of the period of six months ending on the 30th day of June, 1940.

# ACT No. VIII OF 1940

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the  
11th March, 1940.)

## AN ACT further to amend the Indian Emigration Act, 1922.

VII of 1922.

**W**HEREAS it is expedient further to amend the  
Indian Emigration Act, 1922, for the purposes  
hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Indian Emigration Short title,  
(Amendment) Act, 1940.

VII of 1922.

2. In section 29 of the Indian Emigration Act, Amendment  
1922 (hereinafter referred to as the said Act), for of section 29,  
the words “may be exercised by those officers for Act VII of  
the prevention of offences against this Act” the 1922.  
following shall be substituted, namely :—

“may be exercised, for the prevention of offences  
against this Act, by any such officer, or  
by a Protector of Emigrants, or a person  
appointed under section 5”.

3. To section 30A of the said Act the following Amendment  
sub-section shall be added, namely :— of section 30A,  
Act VII of  
1922.

“(5) If any person commits an offence under  
this section, any police-officer may arrest  
him without warrant.”

Price anna 1 or 1½d.

GIPD—L606 LD—17-6 40—5,000.





# ACT No. IX OF 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on the  
11th March, 1940.)*

## **An Act further to amend the Reserve Bank of India Act, 1934.**

1934. **W**HEREAS it is expedient further to amend the Reserve Bank of India Act, 1934, for the purpose of enabling the Reserve Bank of India to act as agent of, and make loans and advances to, the Board of Commissioners of Currency of Ceylon ;

It is hereby enacted as follows :—

1. This Act may be called the Reserve Bank of India (Amendment) Act, 1940.

2. In section 17 of the Reserve Bank of India Act, 1934,— Amendment of  
section 17 of  
Act II of 1934.

- (a) in clause (4), as adapted and modified by the Third Schedule to the India and Burma (Burma Monetary Arrangements) Order, 1937, for the words “ and Burma co-operative banks ” the words “ Burma co-operative banks and the principal currency authority of Ceylon ” shall be substituted
- (b) in clause (13), the words “ a bank which is ” shall be omitted, and for the words “ such banks ” the words “ banks which are such principal currency authorities ” shall be substituted.

*Price anna 1 or 1½d.*

GIPD—L807 LD—20-6-40—5,000.



GOVERNMENT OF INDIA.  
LEGISLATIVE DEPARTMENT.

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# THE ARBITRATION ACT, 1940

(X OF 1940).

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# **THE ARBITRATION ACT, 1940.**

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### CHAPTER III.

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# ACT No. X OF 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on the  
11th March, 1940.)*

## **An Act to consolidate and amend the law relating to Arbitration.**

**W**HEREAS it is expedient to consolidate and amend  
the law relating to arbitration in British India ;

It is hereby enacted as follows :—

### CHAPTER I.

#### INTRODUCTORY.

1. (1) This Act may be called the Arbitration Act, Short title,  
1940. extent and  
commence-  
ment.

(2) It extends to the whole of British India.

(3) It shall come into force on the 1st day of July, 1940.

2. In this Act, unless there is anything repugnant in Definitions  
the subject or context,—

(a) “ arbitration agreement ” means a written agree-  
ment to submit present or future differences to  
arbitration, whether an arbitrator is named therein  
or not ;

(b) “ award ” means an arbitration award ;

(c) “ Court ” means a Civil Court having jurisdiction  
to decide the questions forming the subject-  
matter of the reference if the same had been the  
subject-matter of a suit, but does not, except  
for the purpose of arbitration proceedings under  
section 21, include a Small Cause Court ;

(d) “ legal representative ” means a person who in law  
represents the estate of a deceased person, and  
includes

includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;

(e) "reference" means a reference to arbitration.

## CHAPTER II.

### ARBITRATION WITHOUT INTERVENTION OF A COURT.

Provisions implied in arbitration agreement.

3. An arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule in so far as they are applicable to the reference.

Agreement that arbitrators be appointed by third party.

4. The parties to an arbitration agreement may agree that any reference thereunder shall be to an arbitrator or arbitrators to be appointed by a person designated in the agreement either by name or as the holder for the time being of any office or appointment.

Authority of appointed arbitrator or umpire irrevocable except by leave of Court.

5. The authority of an appointed arbitrator or umpire shall not be revocable except with the leave of the Court, unless a contrary intention is expressed in the arbitration agreement.

Arbitration agreement not to be discharged by death of party thereto.

6. (1) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

(2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

(3) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

Provisions in case of insolvency.

7. (1) Where it is provided by a term in a contract to which an insolvent is a party that any differences arising thereout or in connection therewith shall be referred to arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such differences.

(2) Where

(2) Where a person who has been adjudged an insolvent had, before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of, the insolvency proceedings, then, if the case is one to which sub-section (1) does not apply, any other party to the agreement or the receiver may apply to the Court having jurisdiction in the insolvency proceedings for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement, and the Court may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

(3) In this section the expression "receiver" includes an Official Assignee.

8. (1) In any of the following cases—

- (a) where an arbitration agreement provides that the reference shall be to one or more arbitrators to be appointed by consent of the parties, and all the parties do not, after differences have arisen, concur in the appointment or appointments; or
- (b) if any appointed arbitrator or umpire neglects or refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or the arbitrators, as the case may be, do not supply the vacancy; or
- (c) where the parties or the arbitrators are required to appoint an umpire and do not appoint him;

Power of  
Court to  
appoint  
arbitrator or  
umpire.

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in the appointment or appointments or in supplying the vacancy.

(2) If the appointment is not made within fifteen clear days after the service of the said notice, the Court may, on the application of the party who gave the notice and after giving the other parties an opportunity of being heard, appoint an arbitrator or arbitrators or umpire, as the case may be, who shall have like power to act in the reference and to make an award

an award as if he or they had been appointed by consent of all parties.

Power to party to appoint new arbitrator or, in certain cases, a sole arbitrator.

9. Where an arbitration agreement provides that a reference shall be to two arbitrators, one to be appointed by each party, then, unless a different intention is expressed in the agreement,—

(a) if either of the appointed arbitrators neglects or refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place ;

(b) if one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for fifteen clear days after the service by the other party of a notice in writing to make the appointment, such other party having appointed his arbitrator before giving the notice, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent :

Provided that the Court may set aside any appointment as sole arbitrator made under clause (b) and either, on sufficient cause being shown, allow further time to the defaulting party to appoint an arbitrator or pass such other order as it thinks fit.

*Explanation.*—The fact that an arbitrator or umpire, after a request by either party to enter on and proceed with the reference, does not within one month comply with the request may constitute a neglect or refusal to act within the meaning of section 8 and this section.

Provisions as to appointment of three or more arbitrators.

10. (1) Where an arbitration agreement provides that a reference shall be to three arbitrators, one to be appointed by each party and the third by the two appointed arbitrators, the agreement shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties.

(2) Where an arbitration agreement provides that a reference shall be to three arbitrators to be appointed otherwise than

than as mentioned in sub-section (1), the award of the majority shall, unless the arbitration agreement otherwise provides, prevail.

(3) Where an arbitration agreement provides for the appointment of more arbitrators than three, the award of the majority, or if the arbitrators are equally divided in their opinions, the award of the umpire shall, unless the arbitration agreement otherwise provides, prevail.

11. (1) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award. Power to Court to remove arbitrators or umpire in certain circumstances.

(2) The Court may remove an arbitrator or umpire who has misconducted himself or the proceedings.

(3) Where an arbitrator or umpire is removed under this section, he shall not be entitled to receive any remuneration in respect of his services.

(4) For the purposes of this section the expression "proceeding with the reference" includes, in a case where reference to the umpire becomes necessary, giving notice of that fact to the parties and to the umpire.

12. (1) Where the Court removes an umpire who has not entered on the reference or one or more arbitrators (not being all the arbitrators), the Court may, on the application of any party to the arbitration agreement, appoint persons to fill the vacancies. Power of Court where arbitrator is removed or his authority revoked.

(2) Where the authority of an arbitrator or arbitrators or an umpire is revoked by leave of the Court, or where the Court removes an umpire who has entered on the reference or a sole arbitrator or all the arbitrators, the Court may, on the application of any party to the arbitration agreement, either—

- (a) appoint a person to act as sole arbitrator in the place of the person or persons displaced, or
- (b) order that the arbitration agreement shall cease to have effect with respect to the difference referred.

(3) A person

(3) A person appointed under this section as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the arbitration agreement.

Powers of  
arbitrator.

13. The arbitrators or umpire shall, unless a different intention is expressed in the agreement, have power to—

- (a) administer oath to the parties and witnesses appearing ;
- (b) state a special case for the opinion of the Court on any question of law involved, or state the award, wholly or in part, in the form of a special case of such question for the opinion of the Court ;
- (c) make the award conditional or in the alternative ;
- (d) correct in an award any clerical mistake or error arising from any accidental slip or omission ;
- (e) administer to any party to the arbitration such interrogatories as may, in the opinion of the arbitrators or umpire, be necessary.

Award to be  
signed and  
filed.

14. (1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

(3) Where the arbitrators or umpire state a special case under clause (b) of section 13, the Court, after giving notice to the parties and hearing them, shall pronounce its opinion thereon and such opinion shall be added to, and shall form part of, the award.

15. The

15. The Court may by order modify or correct an award— Power of Court to modify award.

- (a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred ; or
- (b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision ; or
- (c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

16. (1) The Court may from time to time remit the award or any matter referred to arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit— Power to remit award.

- (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration and such matter cannot be separated without affecting the determination of the matters referred ; or
- (b) where the award is so indefinite as to be incapable of execution ; or
- (c) where an objection to the legality of the award is apparent upon the face of it.

(2) Where an award is remitted under sub-section (1) the Court shall fix the time within which the arbitrator or umpire shall submit his decision to the Court :

Provided that any time so fixed may be extended by subsequent order of the Court.

(3) An award remitted under sub-section (1) shall become void on the failure of the arbitrator or umpire to reconsider it and submit his decision within the time fixed.

17. Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow, and no appeal shall



shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award.

Power of  
Court to pass  
interim orders.

18. (1) Notwithstanding anything contained in section 17, at any time after the filing of the award, whether notice of the filing has been served or not, upon being satisfied by affidavit or otherwise that a party has taken or is about to take steps to defeat, delay or obstruct the execution of any decree that may be passed upon the award, or that speedy execution of the award is just and necessary, the Court may pass such interim orders as it deems necessary.

(2) Any person against whom such interim orders have been passed may show cause against such orders, and the Court, after hearing the parties, may pass such further orders as it deems necessary and just.

Power to  
supersede  
arbitration  
when award  
becomes void  
or is set  
aside.

19. Where an award has become void under sub-section (3) of section 16 or has been set aside, the Court may by order supersede the reference and shall thereupon order that the arbitration agreement shall cease to have effect with respect to the difference referred.

### CHAPTER III.

#### ARBITRATION WITH INTERVENTION OF A COURT WHERE THERE IS NO SUIT PENDING.

Application to  
file in Court  
arbitration  
agreement.

20. (1) Where any persons have entered into an arbitration agreement before the institution of any suit with respect to the subject-matter of the agreement or any part of it, and where a difference has arisen to which the agreement applies, they or any of them, instead of proceeding under Chapter II, may apply to a Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs and the remainder as defendant or defendants, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

(3) On

(3) On such application being made, the Court shall direct notice thereof to be given to all parties to the agreement other than the applicants, requiring them to show cause within the time specified in the notice why the agreement should not be filed.

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed by the parties, whether in the agreement or otherwise, or, where the parties cannot agree upon an arbitrator, to an arbitrator appointed by the Court.

(5) Thereafter the arbitration shall proceed in accordance with, and shall be governed by, the other provisions of this Act so far as they can be made applicable.

## CHAPTER IV.

### ARBITRATION IN SUITS.

21. Where in any suit all the parties interested agree that any matter in difference between them in the suit shall be referred to arbitration, they may at any time before judgment is pronounced apply in writing to the Court for an order of reference. Parties to suit may apply for order of reference.

22. The arbitrator shall be appointed in such manner as may be agreed upon between the parties. Appointment of arbitrator.

23. (1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall in the order specify such time as it thinks reasonable for the making of the award. Order of reference.

(2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this Act, deal with such matter in the suit.

24. Where some only of the parties to a suit apply to have the matters in difference between them referred to arbitration in accordance with, and in the manner provided by, section 21, the Court may, if it thinks fit, so refer such matters to arbitration (provided that the same can be separated from the rest of the subject-matter of the suit) in the manner provided in that section, but the suit shall continue Reference to arbitration by some of the parties.

so far as it relates to the parties who have not joined in the said application and to matters not contained in the said reference as if no such application had been made, and an award made in pursuance of such a reference shall be binding only on the parties who have joined in the application.

Provisions applicable to arbitrations under this Chapter.

25. The provisions of the other Chapters shall, so far as they can be made applicable, apply to arbitrations under this Chapter :

Provided that the Court may, in any of the circumstances mentioned in sections 8, 10, 11 and 12, instead of filling up the vacancies or making the appointments, make an order superseding the arbitration and proceed with the suit, and where the Court makes an order superseding the arbitration under section 19, it shall proceed with the suit.

## CHAPTER V.

### GENERAL.

Application of Chapter.

26. Save as otherwise provided in this Act, the provisions of this Chapter shall apply to all arbitrations.

Power of arbitrators to make an interim award.

27. (1) Unless a different intention appears in the arbitration agreement, the arbitrators or umpire may, if they think fit, make an interim award.

(2) All references in this Act to an award shall include references to an interim award made under sub-section (1).

Power to Court only to enlarge time for making award.

28. (1) The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award.

(2) Any provision in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award, shall be void and of no effect.

Interest on awards.

29. Where and in so far as an award is for the payment of money the Court may in the decree order interest, from the date of the decree at such rate as the Court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree.

30. An

**30.** An award shall not be set aside except on one or more of the following grounds, namely :—

Grounds for setting aside award.

- (a) that an arbitrator or umpire has misconducted himself or the proceedings ;
- (b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35 ;
- (c) that an award has been improperly procured or is otherwise invalid.

**31.** (1) Subject to the provisions of this Act, an award may be filed in any Court having jurisdiction in the matter to which the reference relates.

Jurisdiction.

(2) Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been, or may be, filed, and by no other Court.

(3) All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been, or may be, filed, and to no other Court.

(4) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that Court and in no other Court.

**32.** Notwithstanding any law for the time being in force, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be set aside, amended, modified or in any way affected otherwise than as provided in this Act.

Bar to suits contesting arbitration agreement or award.

**33.** Any

Arbitration agreement or award to be contested by application.

33. Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide the question on affidavits :

Provided that where the Court deems it just and expedient, it may set down the application for hearing on other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit.

Power to stay legal proceedings where there is an arbitration agreement.

34. Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are pending to stay the proceedings ; and if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, such authority may make an order staying the proceedings.

Effect of legal proceedings on arbitration.

35. (1) No reference nor award shall be rendered invalid by reason only of the commencement of legal proceedings upon the subject-matter of the reference, but when legal proceedings upon the whole of the subject-matter of the reference have been commenced between all the parties to the reference and a notice thereof has been given to the arbitrators or umpire, all further proceedings in a pending reference shall, unless a stay of proceedings is granted under section 34, be invalid.

(2) In this section the expression " parties to the reference " includes any persons claiming under any of the parties and litigating under the same title.

Power of Court, where arbitration agreement is ordered not to apply to a particular difference, to order that a provision making an award a condition precedent to an action shall not apply to such difference.

36. Where it is provided (whether in the arbitration agreement or otherwise) that an award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the Court, if it orders (whether under this Act or any other law) that the agreement shall cease to have effect as regards any particular difference, may further order that

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the said provision shall also cease to have effect as regards that difference.

IX of 1908

37. (1) All the provisions of the Indian Limitation Act, 1908, shall apply to arbitrations as they apply to proceedings in Court. Limitations.

(2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, a cause of action shall, for the purpose of limitation, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

(3) For the purposes of this section and of the Indian Limitation Act, 1908, an arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other parties thereto a notice requiring the appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring that the difference be submitted to the person so named or designated.

(4) Where the terms of an agreement to refer future differences to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement, and a difference arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(5) Where the Court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration agreement shall cease to have effect with respect to the difference referred, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Indian Limitation Act, 1908, for the commencement of the proceedings (including arbitration) with respect to the difference referred.

IX of 1908.

Disputes as to  
arbitrator's  
remuneration  
or costs.

**38. (1)** If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the Court may, on an application in this behalf, order that the arbitrator or umpire shall deliver the award to the applicant on payment into Court by the applicant of the fees demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitrator or umpire by way of fees such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(2) An application under sub-section (1) may be made by any party to the reference unless the fees demanded have been fixed by written agreement between him and the arbitrator or umpire, and the arbitrator or umpire shall be entitled to appear and be heard on any such application.

(3) The Court may make such orders as it thinks fit respecting the costs of an arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

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## CHAPTER VI.

### APPEALS.

Appealable  
Orders.

**39. (1)** An appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order :—

An order—

- (i) superseding an arbitration ;
- (ii) on an award stated in the form of a special case ;
- (iii) modifying or correcting an award ;
- (iv) filing or refusing to file an arbitration agreement ;
- (v) staying or refusing to stay legal proceedings where there is an arbitration agreement ;
- (vi) setting aside or refusing to set aside an award :

Provided

Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to His Majesty in Council.

## CHAPTER VII.

### MISCELLANEOUS.

40. A Small Cause Court shall have no jurisdiction over any arbitration proceedings or over any application arising thereout save on application made under section 21.

*Small Cause Court not to have jurisdiction over arbitrations save arbitrations in suits before it.*

41. Subject to the provisions of this Act and of rules made thereunder—

*Procedure and powers of Court.*

- (a) the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the Court, and to all appeals, under this Act, and
- (b) the Court shall have, for the purpose of, and in relation to, arbitration proceedings, the same power of making orders in respect of any of the matters set out in the Second Schedule as it has for the purpose of, and in relation to, any proceedings before the Court :

V of 1908.

Provided that nothing in clause (b) shall be taken to prejudice any power which may be vested in an arbitrator or umpire for making orders with respect to any of such matters.

42. Any notice required by this Act to be served otherwise than through the Court by a party to an arbitration agreement or by an arbitrator or umpire shall be served in the manner provided in the arbitration agreement, or if there is no such provision, either—

*Service of notice by party or arbitrator.*

- (a) by delivering it to the person on whom it is to be served, or
- (b) by sending it by post in a letter addressed to that person at his usual or last known place of abode or business in British India and registered under Chapter VI of the Indian Post Office Act, 1898.

V of 1898.

43. (1) The



Power of Court to issue processes for appearance before arbitrator.

43. (1) The Court shall issue the same processes to the parties and witnesses whom the arbitrator or umpire desires to examine as the Court may issue in suits tried before it.

(2) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the reference, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitrator or umpire as they would incur for the like offences in suits tried before the Court.

(3) In this section the expression "processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents.

Power to High Court to make rules.

44. The High Court may make rules consistent with this Act as to—

- (a) the filing of awards and all proceedings consequent thereon or incidental thereto ;
- (b) the filing and hearing of special cases and all proceedings consequent thereon or incidental thereto ;
- (c) the staying of any suit or proceeding in contravention of an arbitration agreement ;
- (d) the forms to be used for the purposes of this Act ;
- (e) generally, all proceedings in Court under this Act.

Crown to be bound.

45. The provisions of this Act shall be binding on the Crown.

Application of Act to statutory arbitrations.

46. The provisions of this Act, except sub-section (1) of section 6 and sections 7, 12 and 37, shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as this Act is inconsistent with that other enactment or with any rules made thereunder.

Act to apply to all arbitrations.

47. Subject to the provisions of section 46, and save in so far as is otherwise provided by any law for the time being in force, the provisions of this Act shall apply to all arbitrations and to all proceedings thereunder :

Provided

Provided that an arbitration award otherwise obtained may with the consent of all the parties interested be taken into consideration as a compromise or adjustment of a suit by any Court before which the suit is pending.

48. The provisions of this Act shall not apply to any reference pending at the commencement of this Act, to which the law in force immediately before the commencement of this Act shall, notwithstanding any repeal effected by this Act, continue to apply. Saving for  
pending  
references.

49. (1) The enactments specified in the Third Schedule are hereby repealed to the extent mentioned in the fourth column thereof. Repeals and  
amendments.

(2) The enactments specified in the Fourth Schedule are hereby amended to the extent and in the manner mentioned in the fourth column thereof.

#### THE FIRST SCHEDULE.

THE FIRST SCHEDULE.

(See section 3.)

IMPLIED CONDITIONS OF ARBITRATION AGREEMENTS.

1. Unless otherwise expressly provided, the reference shall be to a sole arbitrator.

2. If the reference is to an even number of arbitrators, the arbitrators shall appoint an umpire not later than one month from the latest date of their respective appointments.

3. The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow.

4. If the arbitrators have allowed their time to expire without making an award or have delivered to any party to the arbitration agreement or to the umpire a notice in writing stating that they cannot agree, the umpire shall forthwith enter on the reference in lieu of the arbitrators.

5. The umpire shall make his award within two months of entering on the reference or within such extended time as the Court may allow.

6. The parties to the reference and all persons claiming under them shall subject to the provisions of any law for the time being in force, submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in difference and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and documents within their possession or power respectively, which may be required or called for, and do all other things which, during the proceedings on the reference, the arbitrators or umpire may require.

7. The award shall be final and binding on the parties and persons claiming under them respectively.

8. The costs of the reference and award shall be in the discretion of the arbitrators or umpire who may direct to, and by whom, and in what manner, such costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof and may award costs to be paid as between legal practitioner and client.

THE SECOND SCHEDULE.

## THE SECOND SCHEDULE.

(See section 41.)

## POWERS OF COURT.

1. The preservation, interim custody or sale of any goods which are the subject-matter of the reference.
2. Securing the amount in difference in the reference.
3. The detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon or into any land or building in the possession of any party to the reference, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.
4. Interim injunctions or the appointment of a receiver.
5. The appointment of a guardian for a minor or person of unsound mind for the purposes of arbitration proceedings.

## THE THIRD SCHEDULE.

[See section 49 (1).]

## ENACTMENTS REPEALED.

Year.	No.	Short title.	Extent of repeal.
1	2	3	4
1899	IX	The Indian Arbitration Act, 1899.	The whole.
1908	V	The Code of Civil Procedure, 1908.	Section 89, clauses (a) to (f) (both inclusive) of sub-section (1) of section 104 and the Second Schedule.

## THE FOURTH SCHEDULE.

THE FOURTH SCHEDULE.

[See section 49 (2).]

ENACTMENTS AMENDED.

Year. 1	No. 2	Short title. 3	Amendments. 4
1863	XX .	The Religious Endowments Act, 1863.	(a) In section 16— (i) for the words and figure “ Chapter VI of the Code of Civil Procedure ” the words and figures “ Chapter IV of the Arbitration Act, 1940 ” shall be substituted ; (ii) for the words and figure “ section 312 of the said Code ” the words and figure “ section 21 of the said Act ” shall be substituted. (b) In section 17, for the words and figure “ section 312 of the said Code of Civil Procedure ” the words and figures “ section 21 of the Arbitration Act, 1940 ” shall be substituted.
1877	I .	The Specific Relief Act, 1877.	In section 21— (i) for the words and figure “ Code of Civil Procedure and the Indian Arbitration Act, 1899 ” the words and figure “ Arbitration Act, 1940 ” shall be substituted ; (ii) after the words “ but if any person who has made such a contract ” the words “ other than an arbitration agreement to which the provisions of the said Act apply ” shall be inserted.
1908	IX .	The Indian Limitation Act, 1908.	In the First Schedule— (i) for Article 158 the following shall be substituted, namely :— “ 158. Under the Thirty days The date of Arbitration Act, service of the 1940, to set aside notice of filing an award or to of the award.” get an award remitted for reconsideration. (ii) in Articles 159 and 179, for the words “ same Code ” in the first column the words and figure “ Code of Civil Procedure, 1908 ” shall be substituted ; (iii) for Article 178 the following shall be substituted, namely :— “ 178. Under the Ninety The date of service of the Arbitration Act, days. notice of the 1940, for the filing in Court of making of the an award. award.”
1910	IX .	The Indian Electricity Act, 1910.	In section 52, for the figure “ 1899 ” the figure “ 1940 ” shall be substituted.
1913	VII .	The Indian Companies Act, 1913.	In section 152— (i) for the figure “ 1899 ”, in both places where it occurs, the figure “ 1940 ” shall be substituted ; (ii) in sub-section (3) the words “ other than those restricting the application of the Act in respect of the subject-matter of the arbitration ” shall be omitted.

# ACT No. XI OF 1940.

[AS PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on the  
26th March, 1940.)*

## An Act to amend the Coal Mines Safety (Stowing) Act, 1939.

XIX of 1939. **W**HEREAS it is expedient to amend the Coal  
Mines Safety (Stowing) Act, 1939, for the purposes  
hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Coal Mines Safety Short title.  
(Stowing) Amendment Act, 1940.

XIX of 1939. 2. In the preamble to the Coal Mines Safety (Stow- Amendment of  
preamble to  
Act XIX of  
1939.  
ing) Act, 1939 (hereinafter referred to as the said Act),  
after the word “stowing” the words “and other opera-  
tions” shall be inserted, and for the word “operation”,  
where it occurs for the second time, the word “opera-  
tions” shall be substituted.

3. In section 6 of the said Act,—

(a) the brackets and words “(not being territory Amendment of  
section 6,  
Act XIX of  
1939.  
which has been declared under section 5  
of the Indian Tariff Act, 1934, to be foreign  
territory for the purposes of that section)”  
shall be omitted ;

(b) after the words “a duty of customs” the  
brackets and words “(which shall be in  
addition to any duty of customs for the time  
being leviable under any other Act)” shall  
be inserted.

4. In

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*Coal Mines Safety (Stowing) [ACT XI OF 1940.]*  
*Amendment.*

Amendment of  
section 7,  
Act XIX of  
1939.

4. In section 7 of the said Act, for the words, figures and brackets “determined in like manner to that provided in sub-section (1) of section 144 of the Government of India Act, 1935” the words “determined in such manner as may be prescribed” shall be substituted.

Amendment of  
section 8,  
Act XIX of  
1939.

5. In sub-section (1) of section 8 of the said Act,—

(a) the word “and” at the end of clause (i) shall be omitted ;

(b) after clause (ii) the following clauses shall be added, namely :—

“(iii) the execution of operations other than stowing in furtherance of the objects of this Act ; and

(iv) the prosecution of research work connected with safety in mines”.

Amendment of  
section 9,  
Act XIX of  
1939.

6. In sub-section (2) of section 9 of the said Act, after the word “stowing”, where it occurs for the second time, the words “or any other operation towards which assistance may be granted under this Act” shall be inserted.

Amendment of  
section 12,  
Act XIX of  
1939.

7. In sub-section (2) of section 12 of the said Act, after clause (b) the following clause shall be inserted, namely :—

“(bb) the determination of the net proceeds of the duty of excise for the purposes of section 7”.

# ACT No XII of 1940.

[AS PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on  
the 26th March, 1940.)*

## An Act to amend the law relating to Income-tax.

**W**HEREAS it is expedient to amend the law relating to income-tax for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called the Income-tax Law Short title  
and extent.  
Amendment Act, 1940.

(2) It extends to the whole of British India.

2. In section 11 of the Indian Income-tax (Amend- Amendment of  
Act VII of  
1939.  
ment) Act, 1939, for clause (a) of sub-clause (iii) of Amendment of  
Act VII of  
1939.  
clause (b) the following clause shall be substituted,  
namely:—

‘(a) after the word “equivalent” the words  
“, where the assets are ships other than ships  
ordinarily plying on inland waters,” shall be  
inserted, and after the word “prescribed”  
the following words shall be added,  
namely:—

“and in any other case, to such percentage on  
the written down value thereof as may  
in any case or class of cases be prescrib-  
ed”’.

3. In section 35 of the Indian Income-tax Act, Amendment of  
section 35,  
Act XI of 1922.  
1922 (hereinafter referred to as the said Act),—

(a) in sub-section (1),—

(i) after the words “assessment order” the  
words “or refund order” shall be insert-  
ed, and for the words “or assessment”

the



the words "assessment or refund" shall be substituted;

(ii) in the first proviso, after the word "assessment" the words "or reducing a refund" shall be inserted;

(b) in sub-section (3), after the words "enhancing the assessment" the words "or reducing a refund" shall be inserted

Amendment of  
section 54,  
Act XI of  
1922.

4. In sub-section (3) of section 54 of the said Act,—

(a) after clause (g) the following clause shall be inserted, namely:—

"(gg) of any such particulars, relevant to any inquiry into a charge of misconduct in connection with income-tax proceedings against a lawyer or registered accountant, to the authority referred to in sub-section (3) of section 61, when exercising the functions referred to in that sub-section,";

(b) in sub-clause (m), before the words "so much of such particulars" the word "of" shall be inserted.

Amendment of  
section 58S,  
Act XI of  
1922.

5. In section 58S of the said Act, the words "and super-tax", in both places where they occur, shall be omitted.

Amendment of  
section 64,  
Act XI of  
1922.

6. To section 64 of the said Act the following sub-section shall be added, namely:—

"(5) The provisions of sub-section (1) and sub-section (2) shall not apply and shall be deemed never at any time to have applied to any assessee—

(a) on whom an assessment or re-assessment for the purposes of this Act has been, is being or is to be made in the course of any case in respect of which a Commissioner of Income-tax appointed without reference to area under sub-section (2) of section 5 is exercising the functions of a Commissioner of Income-tax, or

(b) where

(b) where by any distribution or allocation of work made by the Commissioner of Income-tax under sub-section (5) of section 5, a particular Income-tax Officer has been charged with the function of assessing that assessee, or

(c) who or whose income is included in a class of persons or a class of incomes specified in any notification issued under sub-section (6) of section 5,

but the assessment of such person, whether the proceedings for such assessment began before or after the 1st day of April, 1939, shall be made by the Income-tax Officer for the time being charged with the function of making such assessment by the Central Board of Revenue or by the Commissioner of Income-tax to whom he is subordinate, as the case may be."

7. After section 67A of the said Act the following section shall be inserted, namely:—

Insertion of new section 67B in Act XI of 1922.

"67B. If on the 1st day of April in any year provision has not yet been made by an Act of the Indian Legislature for the charging of income-tax for that year, this Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding year or the provision proposed in the Bill then before the Legislature, whichever is more favourable to the assessee, were actually in force."

Act to have effect pending legislative provision for charge of income-tax.

8. In the Schedule to the said Act, in paragraph (b) of the second rule, after the word "surplus", where it first occurs, the words "arrived at by adjusting the surplus or deficit" shall be inserted, and the words "after adjusting such surplus" shall be omitted.

Amendment of Schedule, Act XI of 1922.

9. No assessment made in accordance with sub-section (5) of section 64 of the said Act before the 30th day of December, 1939, and no proceedings taken in the course of, or for the purposes of, so making any assessment before that date shall be or continue to be invalid by reason of anything contained in sub-sections (1) and (2) of section 64 of the said Act.

Validity of certain assessments and proceedings made under Act XI of 1922.

10. The Income-tax (Removal of Difficulties and Validating) Ordinance, 1939, is hereby repealed.

Repeal of Ordinance IX of 1939.



# ACT No. XIII OF 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on the  
26th March, 1940.)*

## **An Act further to amend the Reserve Bank of India Act, 1934.**

11 of 1934.

**W**HEREAS it is expedient further to amend the Reserve Bank of India Act, 1934, for the purpose hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Reserve Bank of India Short title.  
(Second Amendment) Act, 1940.

2. In section 4 of the Reserve Bank of India Act, 1934, as adapted and modified in accordance with the Amendment of section 4, Act 11 of 1934.  
Third Schedule to the India and Burma (Burma Monetary Arrangements) Order, 1937 (hereinafter referred to as the said Act), after sub-section (4) the following sub-section shall be inserted, namely :—

“(4A) Without prejudice to the validity of any registration made before the commencement of the Reserve Bank of India (Second Amendment) Act, 1940, no person shall, after the commencement of that Act, be registered as a shareholder in respect of any shares held by him whether in his own name or jointly with another person or persons in excess of a total nominal value of twenty thousand rupees, or be entitled to payment of any dividend on such shares or to exercise any of the rights of a shareholder in respect of such shares otherwise than for the purpose of selling the shares.”

3. In sub-section (2) of section 56 of the said Act, Amendment of section 56, Act 11 of 1934.  
after the words “registered in his name” the following words shall be inserted, namely :—

“or that any shareholder, to whom the provisions of sub-section (4A) of section 4 apply, is the holder of shares in excess of a total nominal value of twenty thousand rupees”.

*Price anna 1 or 1½d.*



# ACT No. XIV of 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on the  
6th April, 1940.)*

## An Act to amend the Parsi Marriage and Divorce Act, 1936.

III of 1936.

**W**HEREAS it is expedient to amend the Parsi Marriage and Divorce Act, 1936;

It is hereby enacted as follows :—

1. This Act may be called the Parsi Marriage and Divorce <sup>Short title.</sup>  
(Amendment) Act, 1940.

III of 1936.

2. In section 40 of the Parsi Marriage and Divorce Act, 1936,— <sup>Amendment of  
section 40, Act  
III of 1936.</sup>

(a) in sub-section (1), after the words “the husband shall”  
the words “while the wife remains chaste and  
unmarried” shall be inserted;

(b) in clause (a) of sub-section (1), the words “while she  
remains chaste and unmarried” shall be omitted;

(c) after sub-section (2) the following sub-section shall be  
added :—

“(3) Where an order for alimony or maintenance in  
favour of a wife has been made either under the  
provisions of the Parsi Marriage and Divorce Act,  
1865, or under the provisions of this Act, the  
Court, if satisfied that the wife has remarried  
or has not remained chaste, shall vary or rescind  
the order.”

*Price anna 1 or 1½d.*

GIPD—L66LD—24.6.40—4,000.



GOVERNMENT OF INDIA  
LEGISLATIVE DEPARTMENT

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# THE EXCESS PROFITS TAX ACT, 1940

(XV OF 1940)

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# THE EXCESS PROFITS TAX ACT, 1940.

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# ACT No. XV of 1940.

[PASSED BY THE INDIAN LEGISLATURE]

*(Received the assent of the Governor General on the  
6th April, 1940)*

**An Act to impose a tax on excess profits arising out of  
certain businesses.**

**W**HEREAS it is expedient to impose a tax on excess profits arising out of certain businesses in the conditions prevailing during the present hostilities;

It is hereby enacted as follows:—

1. (1) This Act may be called the Excess Profits Tax Act, 1940. Short title,  
extent and  
commence-  
ment.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

2. In this Act, unless there is anything repugnant in the Definitions, subject or context,—

(1) “accounting period” in relation to any business means—

(a) where the accounts of the business are made up for successive periods of twelve months, each of such periods;

(b) in any other case, such period as the Excess Profits Tax Officer may determine:

Provided that in determining any accounting period under sub-clause (b) the Excess Profits Tax Officer shall have regard to the period, if any, which is, or has been, determined as the previous year for that business for the purposes of the Indian Income-tax Act, 1922;

(2) “Appellate Assistant Commissioner” means a person appointed to be an Appellate Assistant Commissioner of Excess Profits Tax under section 3;

(3) “average

(3) "average amount of capital" means the average amount of capital employed in any business as computed in accordance with the Second Schedule ;

(4) "Board of Referees" means a Board of Referees appointed under section 3 ;

(5) "business" includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture or any profession or vocation, but does not include a profession carried on by an individual or by individuals in partnership if the profits of the profession depend wholly or mainly on his or their personal qualifications unless such profession consists wholly or mainly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of contracts :

Provided that where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purpose of this definition to be a business carried on by such company or society :

Provided further that all businesses to which this Act applies carried on by the same person shall be treated as one business for the purposes of this Act ;

(6) "chargeable accounting period" means—

(a) any accounting period falling wholly within the term beginning on the 1st day of September, 1939, and ending on the 31st day of March, 1941, and

(b) where any accounting period falls partly within and partly without the said term, such part of that accounting period as falls within the said term ;

(7) "Commissioner" means a person appointed to be a Commissioner of Excess Profits Tax under section 3 ;

(8) "company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession or of a law of an Indian State, and includes any foreign association whether incorporated or not which the Central Board of Revenue.

Revenue may, by general or special order, declare to be a company for the purposes of this Act ;

(9) " deficiency of profits " means—

(i) where profits have been made in any chargeable accounting period, the amount by which such profits fall short of the standard profits ;

(ii) where a loss has been made in any chargeable accounting period, the amount of the loss added to the amount of the standard profits ;

(10) " director " includes any person occupying the position of a director by whatever name called and also includes any person who—

(i) is a manager of the company or concerned in the management of the business ; and

(ii) is remunerated out of the funds of the business ; and

(iii) is the beneficial owner of not less than twenty per cent. of the ordinary share capital of the company ;

of 1922. (11) "dividend " has the meaning assigned to the expression in section 2 of the Indian Income-tax Act, 1922 ;

(12) " Excess Profits Tax Officer " means a person appointed to be an Excess Profits Tax Officer under section 3 ;

of 1922. (13) " income " has the meaning assigned to the expression in section 2 of the Indian Income-tax Act, 1922 ;

(14) " fixed rate " in relation to dividends on share capital, other than ordinary share capital, includes a rate fluctuating in accordance with the maximum rate of income-tax ;

(15) " Inspecting Assistant Commissioner " means a person appointed to be an Inspecting Assistant Commissioner of Excess Profits Tax under section 3 ;

(16) " loss " means a loss computed in the same manner as, for the purposes of this Act, profits are to be computed ;

(17) " person " includes a Hindu undivided family ;

(18) " prescribed " means prescribed by rules made under this Act ;

(19) " profits " means profits as determined in accordance with the First Schedule ;

(20) " standard profits " means standard profits as computed in accordance with the provisions of section 6 ;

(21) " statutory

(21) "statutory percentage" means—

- (a) in relation to a business carried on by a body corporate (other than a company the directors whereof have a controlling interest therein), eight per cent. per annum ;
- (b) in relation to any other business, ten per cent. per annum :

Provided that in relation to any decrease of capital the statutory percentage shall be in all cases six per cent. :

Provided further that where the business was commenced on or after the 1st day of July, 1938, the foregoing percentages shall be increased from eight, ten and six per cent. to ten, twelve and eight per cent., respectively ;

(22) "written down value" has the meaning assigned to that expression in sub-section (5) of section 10 of the Indian ~~XI of 1922.~~ Income-tax Act, 1922.

**Excess profits tax authorities.** 3. (1) There shall be the following classes of excess profits tax authorities for the purposes of this Act, namely :—

- (a) the Central Board of Revenue ;
- (b) Commissioners of Excess Profits Tax ;
- (c) Assistant Commissioners of Excess Profits Tax, who may be either Appellate Assistant Commissioners of Excess Profits Tax or Inspecting Assistant Commissioners of Excess Profits Tax ;
- (d) Excess Profits Tax Officers ;
- (e) Boards of Referees.

(2) Every Commissioner of Excess Profits Tax, Appellate Assistant Commissioner of Excess Profits Tax, Inspecting Assistant Commissioner of Excess Profits Tax and Excess Profits Tax Officer shall be a person who is exercising the functions of Commissioner of Income-tax, Appellate Assistant Commissioner of Income-tax, Inspecting Assistant Commissioner of Income-tax and Income-tax Officer, respectively, ~~XI of 1922.~~ under the Indian Income-tax Act, 1922.

(3) The Central Board of Revenue shall, subject to the provisions of sub-section (2), appoint such persons as Commissioners of Excess Profits Tax, Appellate Assistant Commissioners of Excess Profits Tax, Inspecting Assistant Commissioners of Excess Profits Tax and Excess Profits Tax Officers

as it

as it thinks fit and such persons shall perform their functions in respect of such cases as the Central Board of Revenue may assign to them :

Provided that such directions shall be made entirely at the discretion of the Central Board of Revenue, and, in particular, it shall be competent for that Board to assign a case or class of cases to an officer who is not exercising in respect of that case or class of cases the corresponding functions in relation to the charge of income-tax under the Indian Income-tax Act, 1922.

XI of 1922.

(4) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Central Board of Revenue :

Provided that nothing in this sub-section applies to a Board of Referees :

Provided further that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions.

(5) A Board of Referees shall consist of not less than three and not more than five persons, of whom not less than one-half shall be non-officials having business experience, and one shall be a judicial officer who has exercised the powers of a District Judge or who possesses such qualifications as are normally required for appointment to the post of District Judge, and who has held judicial office for a period of not less than ten years.

(6) Subject to the provisions of sub-section (5), the Central Government may make rules regulating the formation, composition and procedure of Boards of Referees.

4. Subject to the provisions of this Act, there shall, in ~~charge of tax~~, respect of any business to which this Act applies, be charged, levied and paid on the amount by which the profits during any chargeable accounting period exceed the standard profits a tax (in this Act referred to as "excess profits tax") which shall, in respect of any chargeable accounting period ending on or before the 31st day of March, 1941, be equal to fifty per cent. of that excess and shall, in respect of any chargeable accounting period beginning after that date, be equal to such percentage of that excess as may be fixed by the annual Finance Act :

Provided



Provided that any profits which are, under the provisions of sub-section (3) of section 4 of the Indian Income-tax Act, XI of 1922, 1922, exempt from income-tax, and all profits from any business of life insurance shall be totally exempt from excess profits tax under this Act.

**Application of Act.**

5. This Act shall apply to every business of which any part of the profits made during the chargeable accounting period is chargeable to income-tax by virtue of the provisions of sub-clause (i) or sub-clause (ii) of clause (b) of sub-section (1) of section 4 of the Indian Income-tax Act, 1922, or of clause (c) of that sub-section : XI of 1922.

Provided that this Act shall not apply to any business the whole of the profits of which accrue or arise without British India where such business is carried on by or on behalf of a person who is resident but not ordinarily resident in British India unless the business is controlled in India :

Provided further that where the profits of a part only of a business carried on by a person who is not resident in British India or not ordinarily so resident accrue or arise in British India or are deemed under the Indian Income-tax Act, 1922, so to accrue or arise, then, except where the business being the business of a person who is resident but not ordinarily resident in British India is controlled in India, this Act shall apply only to such part of the business, and such part shall for all the purposes of this Act be deemed to be a separate business. XI of 1922.

**Standard pro-  
Sta.**

6. (1) For the purposes of this Act, the standard profits of a business in relation to any chargeable accounting period shall, subject to the provisions of sub-sections (3) and (4), be an amount bearing to the profits of the business during the standard period, if in respect of that business a standard period is available, the same proportion as the chargeable accounting period bears to the standard period :

Provided that if the average amount of capital employed in the business during such chargeable accounting period is greater or less than the average amount of capital employed during the standard period, such amount shall be increased or decreased, as the case may be, by an amount calculated by applying the statutory percentage to the amount of such increase or decrease :

Provided further that in the case of a business which was commenced on or after the 31st day of March, 1936, the standard

standard profits shall, at the option of the person carrying on the business, be an amount calculated by applying the statutory percentage to the average amount of capital employed in the business during such chargeable accounting period.

(2) For the purposes of this section the standard period shall, at the option of the person carrying on the business, be—

SI of 1922.

- (a) the "previous year" as determined under section 2 of the Indian Income-tax Act, 1922, for the purpose of the income-tax assessment for the year ending on the 31st day of March, 1937, or the previous year as so determined for the year ending on the 31st day of March, 1938; or
- (b) the "previous year" as so determined for the year ending on the 31st day of March, 1937, and that for the year ending on the 31st day of March, 1939; or
- (c) the "previous year" as so determined for the year ending on the 31st day of March, 1938, and that for the year ending on the 31st day of March, 1939; or
- (d) the "previous year" as so determined for the year ending on the 31st day of March, 1939, and that for the year ending on the 31st day of March, 1940:

Provided that in no case shall any period of less than nine months be taken as a standard period.

(3) If, within the period specified in the notice issued under sub-section (1) of section 13, the person carrying on the business makes an application to the Excess Profits Tax Officer in this behalf, the Excess Profits Tax Officer shall refer the application to the Board of Referees, and if the Board is satisfied that during the standard period the profits of the business were less than might at the beginning of that period have been reasonably expected, it may direct that the standard profits shall be computed as if the profits during the standard period were such greater amount as it thinks just:

Provided that such amount shall not exceed the statutory percentage of the average amount of the capital employed in the business unless the Board is satisfied that owing to

some

some specific cause peculiar to the business it is just that a greater amount should be allowed.

(4) The standard profits shall be taken to be rupees thirty-six thousand in any case in which the standard profits computed in accordance with sub-section (1) are less than this sum :

Provided that if the chargeable accounting period is greater or less than one year the sum of rupees thirty-six thousand shall for the purpose of this sub-section be increased or decreased proportionately.

(5) Where the standard period includes any period prior to the commencement of Part III of the Government of India Act, 1935, during which Burma was part of British India, there shall, in computing the standard profits of a business under this section, be excluded from the profits of the business during the standard period so much of such profits as arose or accrued or were received in Burma unless such profits are also included in the profits of the business during the chargeable accounting period.

**Relief on occurrence of deficiency of profits.**

7. Where a deficiency of profits occurs in any chargeable accounting period in any business, the profits of the business chargeable with excess profits tax shall be deemed to be reduced and relief shall be granted in accordance with the following provisions :—

- (a) the aggregate amount of the profits so chargeable for the previous chargeable accounting periods shall be deemed to be reduced by the amount of the deficiency of profits and the amount of excess profits tax payable in respect thereof shall be deemed to be reduced accordingly and the relief necessary to give effect to the reduction shall be given by repayment or otherwise ;
- (b) where the amount of the deficiency of profits exceeds the aggregate amount of the profits so chargeable for the previous chargeable accounting periods, or where there is no previous chargeable accounting period, the balance of the deficiency of profits or the whole of the deficiency, as the case may be, shall be applied in reducing any profits so chargeable for the next subsequent chargeable accounting period, and if and so far as it exceeds the amount of

those

those profits, any profits so chargeable for the next subsequent chargeable accounting period and so on.

8. (1) As from the date of any change in the persons carrying on a business, the business shall, subject to the provisions of this section, be deemed for all the purposes of this Act except for the purposes of determining the amount of the statutory percentage to have been discontinued, and a new business to have been commenced. Successions and amalgamations.

(2) Where the change took place before the 1st day of September, 1939, and consisted in the death or retirement of a partner, or the taking in of a partner, the persons carrying on the business after the change may, by notice given in writing before the prescribed date to the Excess Profits Tax Officer, elect that, for the purposes of the provisions of this Act relating to the computation of standard profits, the business shall not be deemed to have been discontinued.

(3) A business shall not, for the purposes of the provisions of this Act relating to the computation of standard profits, be deemed to be discontinued by reason of any change occurring on or after the 1st day of September, 1939, in the persons carrying it on, and the standard profits of the business in relation to any chargeable accounting period shall be computed accordingly, and, in particular, in computing the capital employed in the business after the change, no regard shall be had to any consideration given in respect of the transfer of the business or any of the assets thereof on the occasion of the change.

(4) Where, on or after the 1st day of September, 1939, two or more businesses are amalgamated, the resulting business shall be treated for the purposes of the provisions of this Act relating to the computation of standard profits as if—

- (a) it had been in existence throughout the period during which there were in existence any of the former businesses ;
- (b) any profits made or losses incurred or capital employed in any of those former businesses had been made, incurred or employed in the resulting business ; and
- (c) any assets of any of those former businesses had become assets of the resulting business when they became assets of the former business ;

and,

and, in particular, in computing the capital employed in the resulting business, no regard shall be had to any consideration given in respect of the transfer of any of those former businesses or any of the assets thereof on the occasion of the amalgamation.

(5) Where, on or after the 1st day of September, 1939, part of a business is transferred as a going concern by the person theretofore carrying it on to another person, the part transferred and the part not transferred shall each be deemed for the purposes of the provisions of this Act relating to the computation of standard profits to be a continuation of the original business, and the said provisions, including the provisions of this section relating to amalgamations, shall apply accordingly, subject to any necessary modifications :

Provided that, for the purposes aforesaid, such apportionments shall be made of the profits made, and losses incurred, and the capital employed, in the original business, and of any assets of the original business as may appear to the Excess Profits Tax Officer, or on appeal in the prescribed time and manner to the Board of Referees, to that Board to be just.

(6) Notwithstanding anything in the foregoing provisions of this section, where a business was carried on immediately before the 1st day of April, 1936, and that business, or the main part of that business, was transferred after the said day and before the 1st day of September, 1939, by the person carrying it on to another person, the Excess Profits Tax Officer, if he is satisfied that the business carried on after the transference was not substantially different from the business or part transferred, shall, on the application of the person carrying on the business after the transference, treat that person, for the purposes of the provisions of this Act relating to the computation of standard profits, as if he had carried on the transferred business or part of the business as from the date of the commencement of that business, subject, however, to such modifications (including modifications as respects the computation of capital) as he may consider just.

(7) Where, on or after the 1st day of September, 1939, a partner in a firm carrying on a business to which this Act applies dies, then notwithstanding anything contained in sub-section (1)

sub-section (1) any deficiency of profits in respect of any chargeable accounting period ending on or before the date of his death shall, if it has not been fully applied in reducing the profits of any chargeable accounting period under section 7, be carried forward and applied in reducing any profits from the same business carried on by the surviving partner or partners in the first chargeable accounting period after the death of the partner, and if and so far as it exceeds the amount of those profits, in reducing any profits from such business in the next subsequent chargeable accounting period and so on.

9. (1) Where any interest, annuity or other annual payment, or any royalty or rent, is paid by one company to another company, and one of those companies is a subsidiary of the other, or both are subsidiaries of a third company, the capital, profits and losses of both companies shall be computed for the purposes of this Act as if—

- (a) the interest, annuity, annual payment, royalty or rent were not payable;
- (b) any debt in respect of which any such interest is payable did not exist; and
- (c) any asset in respect of which any such royalty or rent is payable were the property of the company paying the royalty or the rent.

(2) Where—

- (a) a company (hereinafter referred to as “the principal company”) is resident in British India and is not a subsidiary of any other company resident in British India; and
- (b) during the whole or any part of any chargeable accounting period of the principal company, another company, whether or not resident or carrying on business within British India (hereinafter referred to as “the subsidiary company”) is a subsidiary of the principal company,

the following provisions of this section shall, subject to the provisions of section 5, have effect in relation to that chargeable accounting period.

(3) If

(3) If the subsidiary company is a subsidiary of the principal company throughout the chargeable accounting period, such capital employed in, and profits or losses arising from, the business of the subsidiary company as is employed or arise in—

- (i) the chargeable accounting period ; or
- (ii) any year constituting or comprised in the standard period of the principal company,

shall be treated for the purposes of this Act as if it or they were capital employed in, or as the case may be, profits or losses arising from, the business of the principal company.

(4) If the subsidiary company is a subsidiary of the principal company during part only of the chargeable accounting period, the excess or deficiency of profits of the subsidiary company for that part of that period shall be treated as increasing or, as the case may be, decreasing the excess or deficiency of profits of the principal company for the whole period and shall not be deemed to be an excess or deficiency of profits of the subsidiary company.

In this sub-section, the expressions “ excess ” and “ deficiency ” mean, in relation to profits, an excess or deficiency in relation to the standard profits of the subsidiary company or, as the case may be, the principal company.

(5) In any case to which sub-section (3) or sub-section (4) applies, such alteration, if any, of the periods which would otherwise be the chargeable accounting periods of the subsidiary company shall be made as the Central Board of Revenue may direct.

(6) For the purposes of this section, a company shall be deemed to be a subsidiary of another company if and so long as not less than nine-tenths of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies.

(7) The amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and partly through another company or other companies shall be determined in accordance with the provisions of the Third Schedule.

(8) In

(8) In this section and the Third Schedule references to ownership shall be construed as references to beneficial ownership, and the expression "ordinary share capital", in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders whereof have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.

(9) The principal company shall be entitled to allocate to its subsidiary company or companies the respective proportionate shares of the excess profits tax payable by the whole group.

(10) The excess profits tax payable by virtue of this section by the principal company in respect of the profits of any subsidiary company shall, for the purposes of section 12, be deemed to have been paid by the subsidiary company and not by the principal company.

10. (1) A person shall not for the purpose of reducing any excess profits which are or would be chargeable to excess profits tax enter into a fictitious or artificial transaction, or carry out any fictitious or artificial operation. Artificial transactions.

*Explanation.*—For the purposes of this section an artificial transaction or operation includes every device of whatever nature adopted for the purpose of presenting the accounts of a business in a misleading form or manner with intent to evade or having the effect of evading any obligation imposed by this Act.

(2) Any such transaction or operation shall be treated as null and void for the purpose of computing the excess profits tax payable under this Act.

(3) If the Excess Profits Tax Officer is satisfied that any person has acted in contravention of the provisions of subsection (1), he may with the previous approval of the Inspecting Assistant Commissioner direct that such person shall pay, in addition to any excess profits tax for which he is or would, but for such transaction or operation, be liable, a penalty not exceeding the tax evaded or sought to be evaded.

11. (1) The Central Government may by notification in the official Gazette make provision for the granting of relief in cases where both excess profits tax under this Act and excess profits tax under any law in force in the United Kingdom, in

Relief in respect of double excess profits taxation.

any



any Indian State, or in any other part of His Majesty's Dominions have been paid upon the profits of any business if it appears to the Central Government that the laws of the United Kingdom or of that Indian State or of that other part of His Majesty's Dominions provide for corresponding relief in respect of excess profits tax charged on profits both in the United Kingdom or in that State or in that part and in British India :

Provided that where under section 19 of the Finance (No. 2) Act, 1939, national defence contribution has been paid in the United Kingdom in lieu of excess profits tax, that portion of the national defence contribution so paid which is equal to the excess profits tax which would otherwise have been payable shall, for the purposes of this subsection, be deemed to be excess profits tax paid in the United Kingdom. <sup>2 & 3 Geo. 5, ch. 195.</sup>

(2) If any person, who has paid excess profits tax under this Act for any chargeable accounting period in respect of profits arising outside India in a country the laws of which do not provide for any relief in respect of excess profits tax charged in British India, proves that he has paid excess profits tax under the laws of the said country in respect of the same profits, he shall be entitled to the deduction from the excess profits tax payable in British India of a sum equal to one-half thereof or to one-half of the excess profits tax payable in the said country, whichever is the less.

Allowance of excess profits tax in computing income for income-tax purposes.

12. (1) The amount of the excess profits tax payable in respect of a business for any chargeable accounting period diminished by any amount allowable by way of relief under the provisions of section 11, shall, in computing for the purposes of income-tax or super-tax the profits and gains of that business, be allowed to be deducted as an expense incurred in that period.

(2) There shall also be so deducted the amount of any excess profits tax payable under any law in force in a country outside British India on the profits of the business in respect of any chargeable accounting period to the extent that such profits arose in the said country, after diminishing such amount by any amount which is allowable by way of relief by repayment, set off or otherwise under any law in the country

country where the tax is payable providing for the granting of relief in that country where excess profits tax has also been charged in British India :

Provided that where, under the provisions of this Act relating to deficiencies of profits or under any corresponding law in force in the said country without British India, relief is given by way of repayment from excess profits tax chargeable for any chargeable accounting period previous to that in which the deficiency occurs, the amount of the deduction allowed under sub-section (1) or sub-section (2) shall not be altered, but the amount repayable shall be taken into account in computing the profits and gains of the business for the purposes of income-tax as if it were a profit of the business accruing in the chargeable accounting period in which the deficiency of profits occurs.

13. (1) The Excess Profits Tax Officer may, for the purposes of this Act, require any person whom he believes to be engaged in any business to which this Act applies, or to have been so engaged during any chargeable accounting period, or to be otherwise liable to pay excess profits tax, to furnish within such period, not being less than sixty days from the date of the service of the notice, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) with respect to any chargeable accounting period specified in the notice the profits of the business and the standard profits of the business as computed in accordance with the provisions of section 6 or the amount of deficiency available for relief under section 7 :

Issue of notice  
for assessment.

Provided that the Excess Profits Tax Officer may, in his discretion, extend the date for the delivery of the return.

(2) The Excess Profits Tax Officer may serve on any person, upon whom a notice has been served under sub-section (1), a notice requiring him on a date to be therein specified to produce, or cause to be produced, such accounts or documents as the Excess Profits Tax Officer may require and may from time to time serve further notices in like manner requiring the production of such further accounts or documents or other evidence as he may require :

Provided

Provided that the Excess Profits Tax Officer shall not require the production of any accounts relating to a period prior to the "previous year" as determined under section 2 of the Indian Income-tax Act, 1922, for the purpose of the <sup>XI of 1922</sup> income-tax assessment for the year ending on the 31st day of March, 1937.

**Assessments.**

14. (1) The Excess Profits Tax Officer shall, by an order in writing after considering such evidence, if any, as he has required under section 13, assess to the best of his judgment the profits liable to excess profits tax and the amount of excess profits tax payable on the basis of such assessment, or if there is a deficiency of profits, the amount of that deficiency and the amount of excess profits tax, if any, repayable and shall furnish a copy of such order to the person on whom the assessment has been made.

(2) Excess profits tax payable in respect of any chargeable accounting period shall be payable by the person carrying on the business in that period.

(3) Where two or more persons were carrying on the business jointly in the chargeable accounting period, the assessment shall be made upon them jointly and, in the case of a partnership, may be made in the partnership name.

(4) Where by virtue of the foregoing provisions an assessment could, but for his death, have been made on any person either solely or jointly with any other person or persons, the assessment may be made on his legal representative either solely or jointly with that other person or persons, as the case may be.

**Profits escape  
tax assessment.**

15. If, in consequence of definite information which has come into his possession, the Excess Profits Tax Officer discovers that profits of any chargeable accounting period chargeable to excess profits tax have escaped assessment, or have been underassessed, or have been the subject of excessive relief, he may at any time within five years of the end of the chargeable accounting period in question serve on the person liable to such tax a notice containing all or any of the requirements which may be included in a notice under section 13, and may proceed to assess or re-assess the amount of such profits liable to excess profits tax and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under that section.

16. If

**16.** If the Excess Profits Tax Officer, the Appellate ~~Penalties.~~  
Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that any person has, without reasonable cause, failed to furnish the return required under sub-section (1) of section 13, or to produce or cause to be produced the accounts or documents or other evidence required by the Excess Profits Tax Officer under sub-section (2) of that section, or has concealed particulars of the profits made by or capital employed in the business, or has deliberately furnished inaccurate particulars of such profits or capital, he may direct that such person shall pay by way of penalty, in addition to the amount of any excess profits tax payable, a sum not exceeding—

- (a) where the person has failed to furnish the return required under sub-section (1) of section 13, the amount of the excess profits tax payable ; and
- (b) in any other case, the amount of excess profits tax which would have been avoided if the return made had been accepted as correct :

Provided that the Excess Profits Tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner.

**17.** (1) Any person aggrieved by a decision made in Appeal, pursuance of section 8, or objecting to the amount of excess profits tax for which he is liable as assessed by the Excess Profits Tax Officer or denying his liability to be assessed under this Act, or objecting to any penalty imposed by the Excess Profits Tax Officer, or to the amount of any deficiency of profits as assessed by the Excess Profits Tax Officer, or to the amount allowed by the Excess Profits Tax Officer by way of relief under any provision of this Act or to any refusal by the Excess Profits Tax Officer to grant relief may appeal to the Appellate Assistant Commissioner :

Provided that no appeal shall lie against a determination of the amount of the profits of any standard period where those profits have been determined in accordance with the first proviso to rule 1 of the First Schedule except in respect of adjustments made under the provisions of that Schedule :

Provided further that no appeal shall lie under this section against any apportionment made by the Excess Profits Tax

Officer

Officer under the proviso to sub-section (5) of section 8 or against any decision of the Board of Referees under sub-section (3) of section 6.

(2) An appeal shall ordinarily be presented within forty-five days of receipt of the notice of demand relating to the assessment or penalty objected to, or in the case of an appeal against the assessment of a deficiency of profits, within forty-five days of the receipt of the copy of the order determining the deficiency, or in the case of an appeal against the amount of a relief granted or a refusal to grant relief, within forty-five days of the receipt of the intimation of the order granting or refusing to grant the relief, but the Appellate Assistant Commissioner may admit an appeal after the expiration of that period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) An appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(4) The Appellate Assistant Commissioner shall hear and determine the appeal and, subject to the provisions of this Act, shall pass such orders as he thinks fit, and such orders may include an order enhancing the assessment or a penalty :

Provided that an order enhancing an assessment or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(5) The procedure to be adopted in the hearing and determination of appeals shall be in accordance with the rules made in this behalf by the Central Board of Revenue.

Appeal to  
Commissioner  
against Ap-  
pellate Assist-  
ant Commis-  
sioner's orders,  
imposing penal-  
ties or enhanc-  
ing assessments  
or penalties.

18. (1) Any person objecting to an order passed by an Appellate Assistant Commissioner imposing on him a penalty under section 16 or enhancing his assessment or enhancing a penalty under section 17 may appeal to the Commissioner within thirty days of the date on which he was served with notice of such order.

(2) In disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit.

(3) On the coming into operation of Part II of the Indian Income-tax (Amendment) Act, 1939, this section shall cease to have effect. VII of 1939.

19. (1) The

19. (1) The Commissioner may of his own motion call <sup>Power of revision.</sup> for the record of any proceeding under this Act which has been taken by any Excess Profits Tax Officer or Appellate Assistant Commissioner subordinate to him, and on receipt of the record may make such enquiry, or cause such enquiry to be made, and, subject to the provisions of this Act, may pass such orders thereon (including an order enhancing an assessment) as he thinks fit :

Provided that he shall not pass any order prejudicial to a person to whose business this Act applies without hearing him, or giving him a reasonable opportunity of being heard.

of 1939. (2) On the coming into operation of Part II of the Indian Income-tax (Amendment) Act, 1939, sub-section (1) shall cease to have effect, but thereafter any Excess Profits Tax Officer or any person in respect of whose business an order under section 14 has been passed who objects to an order passed by an Appellate Assistant Commissioner under section 16 or section 17 may, within the prescribed time and in the prescribed manner, appeal against such order to the Appellate Tribunal constituted under the Indian Income-tax Act, 1922, and that Tribunal shall have all such powers in disposing of the appeal as it has in respect of appeals preferred to it under the Indian Income-tax Act, 1922.

of 1922-

20. The Commissioner may, at any time within four years <sup>Rectification of mistakes.</sup> from the date of any order passed whether by himself or by any Appellate Assistant Commissioner or Excess Profits Tax Officer under this Act, rectify any mistake in any evidence recorded during assessment or appellate proceedings, or any mistake apparent from the record and shall within the like period rectify any mistake apparent from the record which has been brought to his notice by a person to whose business this Act applies :

Provided that no such rectification shall be made having the effect of enhancing the liability of any person unless that person has been given a reasonable opportunity of being heard.

21. The provisions of sections 4A, 4B, 10, 13, 24F, 29, 36 to 44C (inclusive), 45 to 48 (inclusive), 49E, 49F, 50, 54, 61 to 63 (inclusive), 65 to 67A (inclusive) of the Indian <sup>Application of provisions of Act XI of 1922</sup> Income-tax

Income-tax Act, 1922, shall apply with such modifications, **XI of 1922.** if any, as may be prescribed as if the said provisions were provisions of this Act and referred to excess profits tax instead of to income-tax, and every officer exercising powers under the said provisions in regard to income-tax may exercise the like powers under this Act in regard to excess profits tax in respect of cases assigned to him under subsection (3) of section 3 as he exercises in relation to income-tax under the said Act :

Provided that references in the said provisions to the assessee shall be construed as references to a person to whose business this Act applies.

Income-tax  
papers to be  
available for  
the purposes of  
this Act.

22. (1) Notwithstanding anything contained in the Indian Income-tax Act, 1922, all information contained **XI of 1922.** in any statement or return made or furnished under the provisions of that Act or obtained or collected for the purposes of that Act may be used for the purposes of this Act.

(2) All information contained in any statement or return made or furnished under the provisions of this Act or obtained or collected for the purposes of this Act may be used for the purposes of the Indian Income-tax Act, 1922. **XI of 1922.**

Failure to deli-  
ver returns or  
statements.

23. If any person fails, without reasonable cause or excuse, to furnish in due time any return or statement, or to produce, or cause to be produced, any accounts or documents required to be produced under section 13, he shall on conviction by a Magistrate be punishable with fine which may extend to five hundred rupees, and with a further fine which may extend to fifty rupees for every day during which the default continues.

False state-  
ment and de-  
claration.

24. If a person makes in any return required under section 13 any statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable on conviction by a Magistrate with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Institution of  
proceedings and  
composition of  
offences

25. (1) A person shall not be proceeded against for an offence under section 23 or section 24 except at the instance of the Inspecting Assistant Commissioner.

(2) No prosecution for an offence punishable under section 23 or section 24 or under the Indian Penal Code **XLV of 1860.** shall

shall be instituted in respect of the same facts as those in respect of which a penalty has been imposed under this Act.

(3) The Inspecting Assistant Commissioner may, either before or after the institution of proceedings, compound any offence punishable under section 23 or section 24.

26. (1) If the Central Board of Revenue is satisfied in the case of any business that special circumstances exist which render it inequitable that the standard profits of the business in relation to any chargeable accounting period should be computed in accordance with the provisions of sub-section (1) of section 6, and that no relief or insufficient relief has been granted under the provisions of sub-section (3) of that section, the Central Board of Revenue may direct that the standard profits of the business shall be computed to be such greater amount as the Central Board of Revenue thinks just :

Power of Central Board of Revenue to grant relief in special cases.

Provided that such amount shall not exceed the statutory percentage of the average amount of the capital employed in the business unless the Central Board of Revenue is satisfied that owing to some specific cause peculiar to the business it is just that a greater amount should be allowed and that the relief, if any, afforded by the Board of Referees under sub-section (3) of section 6 is inadequate.

(2) Without prejudice to the generality of the provisions of sub-section (1) the Central Board of Revenue shall, in considering the making of a direction under that sub-section, have regard to the following circumstances, namely :—

(a) that the capital employed in a business commenced on or after the 1st day of July, 1938, is so small in relation to the volume of the activities of the business that to compute the standard profits in accordance with the provisions of section 6 would be inequitable, taking into account the normal profits made in similar businesses ;

(b) that owing to the nature of the business heavy expenditure by way of preliminary expenses or expenses in connection with experimental or development work has been incurred in accounting periods



periods closely preceding the chargeable accounting period and that during the chargeable accounting period such expenditure would normally fall to be written off wholly or partly in the books of the person chargeable to excess profits tax ;

- (c) that the business is of a pioneer nature, that is to say, is concerned with an industrial process or a form of manufacture or production not undertaken in British India before the 1st day of April, 1932, and has not been in existence long enough to have paid income-tax for the previous year as determined for the purpose of the income-tax assessment for the year beginning on the 1st day of April, 1937

(3) If the Central Board of Revenue is satisfied that the computation in accordance with the provisions of Schedule I of the profits of a business during any chargeable accounting period would be inequitable, owing to any of the following circumstances, namely :—

- (a) any postponement or suspension, as a consequence of the present hostilities, of renewals or repairs, or
- (b) the provision of buildings, plant or machinery which will not be required for the purposes of the business after the termination of the present hostilities, or
- (c) difficulties in bringing into British India income arising outside British India where the country in which the income accrued prohibits or restricts by its laws the remittance of money to British India, and loss in the remittance to British India of such income because of fluctuations in the rate of exchange between that country and British India ;

the Central Board of Revenue may direct that such allowances shall be made in computing the profits of the business during that chargeable accounting period as the Central Board of Revenue thinks just :

Provided that in making such direction the Central Board of Revenue may impose such conditions as it deems appropriate.

27. (1) The

27. (1) The Central Board of Revenue may, subject to the control of the Central Government, make rules for carrying out the purposes of this Act. <sup>Power to make rules.</sup>

(2) Without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe the procedure to be followed on appeals, applications for rectification of mistakes, and applications for refunds ;

XI of 1922.

(b) provide for the adaptation to excess profits tax of any of the provisions of the Indian Income-tax Act, 1922, which are made applicable to excess profits tax by section 21 ; or of any rules made under any such provision ;

(c) provide in regard to companies whose business consists wholly or mainly in the dealing in or holding of investments for the granting of exemption or relief from liability to excess profits tax of profits derived from investments in other companies the profits of which have been subjected to excess profits tax in British India ;

(d) provide for any matter which by, or under, this Act is to be prescribed.

XI of 1922.

(3) The power to make rules conferred by this section shall be exercised in like manner as the power to make rules under section 59 of the Indian Income-tax Act, 1922.

## SCHEDULE I.

[See section 2 (19).]

*Rules for the computation of profits for purposes of Excess Profits Tax.*

1. The profits of a business during the standard period, or during any chargeable accounting period, shall be separately computed, and shall, subject to the provisions of this Schedule, be computed on the principles on which the profits of a business are computed for the purposes of income-tax under section 10 of the Indian Income-tax Act, 1922:

Provided

Provided that where the profits during any standard period have already been determined for the purpose of an assessment under the Indian Income-tax Act, 1922, such profits as so determined shall, subject to the adjustments required by this Schedule, be taken as the profits during that period for the purpose of excess profits tax :

Provided further that where a standard period or chargeable accounting period is not an accounting period, the profits or losses of the business during any accounting periods wholly or partly included within the standard period or chargeable accounting period shall be so computed as aforesaid, and such division and apportionment to specific periods of those profits or losses and such aggregation of those profits and losses, or any apportioned part thereof shall be made as appears necessary to arrive at the profit during the standard period or chargeable accounting period : and any such apportionment shall be made in proportion to the number of months or fractions of months in the respective periods unless the Excess Profits Tax Officer, having regard to any special circumstances, otherwise directs.

2. The profits of a business during the standard period shall be computed on the same basis and in the same manner as the profits of that business are under the Indian Income-tax Act, 1922, as amended by the Indian Income-tax (Amendment) Act, 1939, computed for the chargeable accounting period, notwithstanding that the Indian Income-tax (Amendment) Act, 1939, may not have been in force in the standard period.

3. (1) The principle of adding the allowance for depreciation for any one period to the allowance for depreciation for any subsequent period and deeming it to be part of the allowance for such subsequent period shall not be followed.

(2) No allowance shall be made for any loss other than a loss sustained in a business to which this Act applies.

(3) Nothing in this Act shall be construed as permitting the application, in computing profits for the purposes of the excess profits tax, of the provisions of sub-section (2) of section 24 of the Indian Income-tax Act, 1922.

4. (1) Income

4. (1) Income received from investments shall be included in the profits in the cases and to the extent provided in sub-rules (2) and (4) of this rule and not otherwise.

(2) In the case of the business of a building society, or of a moneylending business, banking business, insurance business or business consisting wholly or mainly in the dealing in or holding of investments, the profits shall include all income received from investments, whether or not such income is included in the profits charged under section 10 of the Indian Income-tax Act, 1922, or is charged under any other section of that Act, or has been subjected to deduction of tax at source or is free of or exempt from income-tax.

(3) Notwithstanding anything contained in sub-rule (2), where the profits of a subsidiary company are under the provisions of section 9 to be included in the profits of the principal company for the purposes of assessment to excess profits tax, dividends from the subsidiary company out of such profits shall not also be included in the profits of the principal company.

(4) In the case of a business which consists wholly or partly in the letting out of property on hire, the income from the property shall be included in the profits of the business whether or not it has been charged to income-tax under section 9 of the Indian Income-tax Act, 1922, or under any other section of that Act.

(5) Where the person carrying on a business is the beneficial owner of any investments, the income from which is by virtue of the provisions of this rule not to be taken into account in computing the profits of the business, and a deduction would, apart from the provisions of this rule, fall to be made in respect of interest on borrowed money, the deduction (if any) to be made in respect of that interest shall be computed as if the principal of the borrowed money were reduced by the value of those investments :

Provided that where the person carrying on the business is not a company, no such reduction shall be deemed to be made in the principal of any borrowed money in respect of any investments unless the investments are mortgaged, charged or pledged as security for the repayment of that money and interest thereon.

5. If at any time after the close of the standard period, any increase in the capital employed in a business has been effected by means of a loan from a bank carrying on a *bona fide* banking business, or by means of a public issue of debentures secured on the property of the company, the interest on so much of the loan or debentures as has been utilised in effecting the increase in the capital shall not be deducted in computing the profits for the purposes of excess profits tax and, notwithstanding the provisions of rule 2 of Schedule II, that amount of such loan or debentures shall not be deducted in arriving at the amount of the capital employed in the business.

6. No deduction shall be made on account of liability to pay, or payment of, income-tax, super-tax, or excess profits tax.

7. (1) In the case of a business carried on, in any accounting period which constitutes or includes a chargeable accounting period, by a company the directors whereof have a controlling interest therein,—

- (a) if the standard profits of the company are computed by reference to the profits during a standard period, no deduction shall be allowed in respect of directors' remuneration in excess of the amount paid for directors' remuneration in respect of the standard period or, if the standard period is longer or shorter than the accounting period, in excess of a sum which bears to the sum paid for directors' remuneration in respect of the standard period the same proportion as the length of the accounting period bears to that of the standard period ;
- (b) if the standard profits are not computed by reference to the profits during a standard period, no deduction shall be allowed in respect of directors' remuneration.

(2) In this rule the expression " directors' remuneration " does not include—

- (a) the remuneration of any director who is required to devote substantially the whole of his time to the service of the company in a managerial or technical

technical capacity and is not the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control, more than five per cent. of the ordinary share capital of the company, or

- (b) the remuneration of any managing agent where such remuneration is included in the profits of the managing agent's business for the purposes of excess profits tax.

8. In the case of a business carried on by a company, if the standard profits of the company are computed by reference to the profits during a standard period, no deduction shall be allowed in respect of remuneration paid to a managing agent in excess of the amount which would have been payable to that managing agent if the agreement in force in the standard period had been in force in the chargeable accounting period, except where such remuneration is subjected to excess profits tax in the hands of the managing agent.

9. Where the performance of a contract extends beyond the accounting period, there shall (unless the Excess Profits Tax Officer, owing to any special circumstances, otherwise directs) be attributed to the accounting period such proportion of the entire profits or loss which has resulted, or which it is estimated will result, from the complete performance of the contract as is properly attributable to the accounting period, having regard to the extent to which the contract was performed therein :

Provided that when any such contract has been completed and the profits have been finally ascertained, if the aggregate of the amounts attributed to previous accounting periods exceeds the profit, as finally ascertained, from the complete performance of the contract, an adjustment shall be made to reduce the amounts so attributed to the various chargeable accounting periods to the amount of the profits as finally ascertained.

10. In respect of any building erected on or after the 1st day of September, 1939, which during any chargeable accounting period has ceased to be required for the purposes of the business or has been sold, any amount by which the value of

the building at the date when it ceased to be required for the purposes of the business or the price obtained for the building, as the case may be, falls short of the written down value of the building shall be allowed as a deduction in arriving at the profits of that chargeable accounting period.

## SCHEDULE II.

[See section 2 (3).]

### *Rules for computing the average amount of capital.*

1. (1) Subject to the provisions of this Schedule, the average amount of the capital employed in a business (so far as it does not consist of money) shall be taken to be—

- (a) so far as it consists of assets acquired by purchase on or after the commencement of the business, the price at which those assets were acquired, subject to the deductions hereafter specified ;
- (b) so far as it consists of assets being debts due to the person carrying on the business, the nominal amount of those debts, subject to the said deductions ;
- (c) so far as it consists of any other assets which have been acquired otherwise than by purchase as aforesaid, the value of the assets when they became assets of the business, subject to the said deductions.

(2) The price or value of any assets other than a debt shall be subject to such deductions for depreciation as are necessary to reduce the asset to its written down value and, in the case of a debt, the nominal amount of the debt shall be subject to any deduction which has been allowed in respect thereof for income-tax purposes.

(3) Where the price of any asset has been satisfied otherwise than in cash, the then value of the consideration actually given for the asset shall be treated as the price at which the asset was acquired.

2. (1) Any borrowed money and debts shall be deducted, and in particular any debt for income-tax or super-tax or for excess profits tax in respect of the business shall be deducted :

Provided

Provided that any such debt for income-tax or super-tax or excess profits tax shall, for the purposes of this Schedule, be deemed to have become due—

(a) in the case of income-tax and super-tax, on the last day of the period of time within which the tax is payable under section 45 of the Indian Income-tax Act, 1922 ;

(b) in the case of excess profits tax, on the first day after the end of the chargeable accounting period in respect of which the tax is assessable notwithstanding that the excess profits tax may not have been assessed until after that date.

(2) Where any debt for the excess profits tax assessable in respect of any period is to be deducted under this rule, the amount thereof shall not be reduced as the result of any relief to be given in respect of a deficiency of profits occurring in any subsequent period, and the amount of any such relief shall be treated as having become an asset of the business on the first day after the end of the chargeable accounting period in which the deficiency occurred.

3. Any investments the income from which is by virtue of the provisions of the First Schedule not to be taken into account in computing the profits of the business, and any moneys not required for the purposes of the business, shall be left out of account, but where any investments in the beneficial ownership of the person carrying on the business are so left out of account, the sum (if any) to be deducted under the last preceding rule in respect of borrowed money shall be computed as if the principal of the borrowed money were reduced by the value of those investments :

Provided that where the person carrying on the business is not a company, no reduction shall be deemed to be made in the principal of any borrowed money in respect of any investments unless the investments are mortgaged, charged or pledged as security for the repayment of that money and the interest thereon.

4. Notwithstanding anything contained in rule 3, in the case of the business of shipping, to which this Act applies, the sale proceeds of any tonnage sold or the amount of compensation in respect of loss of ships or the amount of accumulation



accumulation of reserves, whether invested or not, shall be taken into account in computing the average amount of capital employed in such business :

Provided that any income received from investment of such funds shall be included in computing profits for purposes of the excess profits tax.

5. For the purpose of ascertaining the average amount of capital employed in a business during any period, the profits or losses made in that period shall, except so far as the contrary is shown, be deemed—

(a) to have accrued at an even rate throughout the period ;  
and

(b) to have resulted, as they accrued, in a corresponding increase or decrease, as the case may be, in the capital employed in the business.

6. Where, in accordance with the second proviso to section 5 of this Act, this Act is applicable to part only of a business, the capital employed in that part shall be computed separately from any other capital of the person carrying on the business, and all references to capital employed in a business shall be construed as references to capital employed in that part of the business only.

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### SCHEDULE III.

[See section 9 (7).]

*Rules for determining the amount of capital held by a company through other companies.*

1. Where, in the case of a number of companies, the first directly owns ordinary share capital of the second and the second directly owns ordinary share capital of the third, then, for the purposes of this Schedule, the first shall be deemed to own ordinary share capital of the third through the second and, if the third directly owns ordinary share capital of a fourth, the first shall be deemed to own ordinary share capital of the fourth through the second and third, and the second shall be deemed to own ordinary share capital of the fourth through the third, and so on.

2. In

## 2. In this Schedule—

(a) any number of companies of which the first directly owns ordinary share capital of the next and the next directly owns ordinary share capital of the next but one and so on, and, if they are more than three, any three or more of them, are referred to as “ a series ” ;

(b) in any series—

(i) that company which owns ordinary share capital of another through the remainder is referred to as “ the first owner ” ;

(ii) that other company the ordinary share capital of which is so owned is referred to as “ the last owned company ” ;

(iii) the remainder, if one only, is referred to as an “ intermediary ” or, if more than one, is referred to as a “ chain of intermediaries ” ;

(c) a company in a series which directly owns ordinary share capital of another company in the series is referred to as an “ owner ” ;

(d) any two companies in a series of which one owns ordinary share capital of the other directly, and not through one or more of the other companies in the series, are referred to as being directly related to one another.

3. Where every owner in a series owns the whole of the ordinary share capital of the company to which it is directly related, the first owner shall be deemed to own through the intermediary or chain of intermediaries the whole of the ordinary share capital of the last owned company.

4. Where one of the owners in a series owns a fraction of the ordinary share capital of the company to which it is directly related, and every other owner in the series owns the whole of the ordinary share capital of the company to which it is directly related, the first owner shall be deemed to own that fraction of the ordinary share capital of the last owned company through the intermediary or chain of intermediaries.

5. Where

**5. Where—**

- (a) each of two or more of the owners in a series owns a fraction, and every other owner in the series owns the whole, of the ordinary share capital of the company to which it is directly related ; or
- (b) every owner in a series owns a fraction of the ordinary share capital of the company to which it is directly related ;

the first owner shall be deemed to own through the intermediary or chain of intermediaries such fraction of the ordinary share capital of the last owned company as results from the multiplication of those fractions.

6. Where the first owner in any series owns a fraction of the ordinary share capital of the last owned company in that series through the intermediary or chain of intermediaries in that series, and also owns another fraction or other fractions of the ordinary share capital of the last owned company, either—

- (a) directly ; or
- (b) through any intermediary or intermediaries which is not a member or are not members of that series ;  
or
- (c) through a chain or chains of intermediaries of which one or some or all are not members of that series ;  
or
- (d) in a case where the series consists of more than three companies, through an intermediary or intermediaries which is a member or are members of the series, or through a chain or chains of intermediaries consisting of some but not all of the companies of which the chain of intermediaries in the series consists ;

then, for the purpose of ascertaining the amount of the ordinary share capital of the last owned company owned by the first owner, all those fractions shall be aggregated and the first owner shall be deemed to own the sum of those fractions.

# ACT No. XVI of 1940.

[PASSED BY THE INDIAN LEGISLATURE]

(Received the assent of the Governor General on the  
6th April, 1940)

An Act to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to vary the rate of excise duty on sugar other than *khandsari* or palmyra sugar leviable under the Sugar (Excise Duty) Act, 1934, to vary the rate of the excise and customs duty on motor spirit leviable under the Motor Spirit (Duties) Act, 1917, and the Indian Tariff Act, 1934, to fix maximum rates of postage under the Indian Post Office Act, 1898, and to fix rates of income-tax and super-tax.

XIV of 1934.

II of 1917.

XXXII of  
1934.

VI of 1898.

WHEREAS it is expedient to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to vary the rate of excise duty on sugar other than *khandsari* or palmyra sugar, leviable under the Sugar (Excise Duty) Act, 1934, to vary the rate of the excise duty on motor spirit leviable under the Motor Spirit (Duties) Act, 1917, to vary the rate of the customs duty on motor spirit leviable under the Indian Tariff Act, 1934, to fix maximum rates of postage under the Indian Post Office Act, 1898, and to fix rates of income-tax and super-tax ;

XIV of 1934.

II of 1917.

XXXII of  
1934.

VI of 1898.

It is hereby enacted as follows :—

1. (1) This Act may be called the Indian Finance Act, 1940.

Short title  
and extent.

(2) It extends to the whole of British India.

2. The provisions of section 7 of the Indian Salt Act, 1882, shall, in so far as they enable the Central Government to impose by rule made under that section

Fixation of  
salt duty.

XII of 1882.

Price anna 1 or 1½d.

section a duty on salt manufactured in, or imported into, any part of British India, be construed as if, for the year beginning on the 1st day of April, 1940, they imposed such duty at the rate of one rupee and four annas per maund of eighty-two and two-sevenths pounds avoirdupois of salt manufactured in, or imported by land into, any such part, and such duty shall, for all the purposes of the said Act, be deemed to have been imposed by rule under that section.

Excise duty  
on sugar.

\*3. For clause (ii) of sub-section (2) of section 3 of the Sugar Excise Duty Act, 1934, the following shall be substituted, namely :— XIV of 1934.

“(ii) on all other sugar except palmyra sugar at the rate—

(a) of two rupees per cwt. in the case of sugar produced on or before the 29th day of February, 1940, and either issued out of a factory on or after that date or used within a factory on or after that date in the manufacture of any commodity other than sugar ; and

(b) of three rupees per cwt. in the case of sugar produced on or after the 1st day of March, 1940 ”.

Excise duty  
on motor  
spirit.

\*4. In sub-section (1) of section 3 of the Motor Spirit (Duties) Act, 1917, for the words “ eight annas ” II of 1917. the words “ twelve annas ” shall be substituted, and the provisions of section 5 of the Indian Finance (Supplementary and Extending) Act, 1931, so far as they relate to the levy of an additional duty on motor spirit shall cease to have effect.

Import duty  
on motor  
spirit.

\*5. In the First Schedule to the Indian Tariff Act, 1934, in Item No. 27 (6), for the words “ Ten annas per Imperial gallon ” in the fourth column, the following words shall be substituted, namely :— XXXII of 1934.

“ The rate at which excise duty is for the time being leviable on motor spirit ”.

6, For

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\*This section came into effect on the 1st March, 1940, by virtue of a declaration inserted in the Bill under the Provisional Collection of Taxes Act, 1931 (XVI of 1931).

Inland  
postage  
rates.

VI of 1898.

6. For the year beginning on the 1st day of April, 1940, the Schedule contained in Schedule I to this Act shall be inserted in the Indian Post Office Act, 1898, as the First Schedule to that Act.

7. (1) Subject to the provisions of sub-section (2)—  
Income-tax and super-tax.

(a) income-tax for the year beginning on the 1st day of April, 1940, shall be charged at the rates specified in Part I of Schedule II to the Indian Finance Act, 1939 ;

XI of 1922.

(b) rates of super-tax for the year beginning on the 1st day of April, 1940, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be the rates specified in Part II of Schedule II to the Indian Finance Act, 1939 :

II of 1912.

Provided that in the case of an association of persons being a Co-operative Society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature governing the registration of Co-operative Societies, the rates of super-tax for the year beginning on the 1st day of April, 1940, shall be—

(1) On the first Rs. 25,000 of total  
income . . . . . Nil.

(2) On the balance of total income One anna  
in the  
rupee.

XI of 1922.

(2) In cases to which section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined in accordance with the provisions of that section with reference to the rates imposed by sub-section (1).

XI of 1922.

(3) For the purpose of this section and of the rates of tax imposed by sub-section (1), the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922.

## SCHEDULE I.

# **SCHEDULE I.**

Schedule to be inserted in the Indian Post Office Act, 1898.

[ See section 6.]

## **“ THE FIRST SCHEDULE.**

### **INLAND POSTAGE RATES.**

[ See section 7.]

#### *Letters.*

For a weight not exceeding one tola . . . . .	One anna.
For every tola, or fraction thereof, exceeding one tola . . . . .	Half an anna.

#### *Postcards.*

Single . . . . .	Nine pies.
Reply . . . . .	One and a half annas.

#### *Book, Pattern and Sample Packets.*

For the first two and a half tolas or fraction thereof . . . . .	Six pies.
For every additional two and a half tolas, or fraction thereof, in excess of two and a half tolas . . . . .	Three pies.

#### *Registered Newspapers.*

For a weight not exceeding ten tolas . . . . .	Quarter of an anna.
For a weight exceeding ten tolas and not exceeding twenty tolas . . . . .	Half an anna.
For every twenty tolas, or fraction thereof, exceeding twenty tolas . . . . .	Half an anna.
In the case of more than one copy of the same issue of a registered newspaper being carried in the same packet—	
For a weight not exceeding ten tolas . . . . .	Half an anna.
For every additional five tolas, or fraction thereof, in excess of ten tolas . . . . .	Quarter of an anna.
Provided that such packet shall not be delivered at any addressee's residence but shall be given to a recognised agent at the post office.	

#### *Parcels.*

For a weight not exceeding forty tolas . . . . .	Four annas.
For every forty tolas, or fraction thereof, exceeding forty tolas . . . . .	Four annas.”

# ACT No. XVII OF 1940.

[PASSED BY THE INDIAN LEGISLATURE]

*(Received the assent of the Governor General on the  
9th April, 1940)*

**An Act further to amend the Factories Act, 1934, for a certain purpose.**

**W**HEREAS it is expedient to make provision for regulating labour in certain small factories, and for that purpose further to amend the Factories **XXV** of 1934. Act, 1934;

It is hereby enacted as follows :—

1. This Act may be called the Factories (Amend- Short title.  
ment) Act, 1940.

2. After Chapter V of the Factories Act, 1934 (here- Insertion of  
inafter referred to as the said Act), the following new Chapter:  
Chapter shall be inserted, namely :— **VA** in Act  
**XXV** of 1934.

## “CHAPTER VA.

### SMALL FACTORIES.

59A. (1) In this Act, unless there is anything **Small**  
repugnant in the subject or context, “small factory” **Factories.**  
means any premises including the precincts thereof  
whereon ten or more but less than twenty workers  
are working or were working on any day of the pre-  
ceding six months, and in any part of which a manu-  
facturing process is being carried on with the aid of  
power, or is ordinarily so carried on, but does not  
include a mine subject to the operation of the Indian  
Mines Act, 1923 :

**IV** of 1923.

Provided that the Provincial Government may, by notification in the official Gazette, declare any premises to be a small factory, notwithstanding that less than ten workers are working thereon, if such premises would otherwise be a small factory.

(2) For

*Price anna 1 or 1½d.*



*Factories (Amendment)* [ACT XVII OF 1940.]

(2) For the purposes of this Chapter an adolescent holding a certificate granted under this Act to work as an adult shall be deemed to be an adult.

Certain provisions of this Act to apply to small factories wherein child labour is employed. |

59B. (1) All the provisions of this Act, except clause (j) of section 2, sections 4, 5, 6 and 7, sub-sections (1) and (4) of section 14, sections 15, 21, 22 and 25, sub-sections (1), (2) and (3) of section 33 and Chapter IV shall apply to, and in relation to, all small factories wherein any worker who is not, or is not deemed to be, an adult is employed ; and in the provisions hereby made so applicable every reference to a factory shall be deemed to include, so far as may be, a reference to a small factory.

(2) The aforesaid provisions shall cease to apply to a small factory on the expiry of six months from the receipt by the Inspector of a notice in writing from the occupier that he has ceased to employ therein any worker who is not, or is not deemed to be, an adult, unless any such worker is employed therein on any day of the said six months :

Provided that if any such worker is thereafter employed in the small factory, the said provisions of this Act shall again apply thereto.

Certain other provisions of law not barred.

59C. The provisions of this Chapter shall be in addition to, and not in derogation of, the provisions of the Employment of Children Act, 1938."

XXVI of 1938.

# ACT No. XVIII of 1940.

[PASSED BY THE INDIAN LEGISLATURE]

*(Received the assent of the Governor General on the  
9th April, 1940)*

**An Act to make certain provisions relating to service by European British subjects in the armed forces of, or in a civil capacity under, the Crown.**

**W**HEREAS it is expedient to make certain provisions relating to service by European British subjects in the armed forces of, or in a civil capacity under, the Crown ;

It is hereby enacted as follows :—

1. (1) This Act may be called the National Service (European British Subjects) Act, 1940. Short title, extent and commencement.

(2) It extends to the whole of British India, and applies also to European British subjects in any part of India.

(3) It shall come into force at once.

2. In this Act, unless there is anything repugnant Definitions. in the subject or context,—

(a) “competent authority” means, with reference to any person liable under this Act to be called up for enquiry, the Officer Commanding the military district, or Independent Area, or Sind Area or Delhi Area, as the case may be, in which that person is for the time being resident ;

(b) “European British subject” means any subject of His Majesty of European descent in the male line born, naturalised or domiciled in the British Islands or in any Dominion as defined in the Statute of Westminster, 1931, or in any Colony except Ceylon ;

(c) “prescribed”

*Price anna 1 or 1½d.*

*National Service (European British [ACT XVIII  
Subjects)*

(c) "prescribed" means prescribed by rules made under this Act ;

(d) "national service" means service in the armed forces of the Crown or in any civilian capacity under the Crown.

Liability to be  
called up for  
enquiry.

3. (1) Every male European British subject for the time being in India, not being—

(a) a person in holy orders, or a regular minister of any religious denomination, or

(b) a member of His Majesty's regular Naval, Military or Air Forces, or a member of any Reserve of any such force who is liable under his terms of service in such Reserve to be called up for service at any time and not only on partial or general mobilisation, or

(c) a servant of the Crown, or

(d) a person not included in clause (c) who is serving in the service of a federal railway or an Indian State railway or a minor railway as defined in the Government of India Act, 1935,

shall be liable under this Act to be called up for enquiry into his availability and fitness for national service.

(2) A person liable to be called up for enquiry under this Act shall remain so liable until he has completed his fiftieth year and no longer.

Calling up for  
enquiry.

4. (1) The competent authority may, after consultation with the National Service Advisory Committee constituted under section 5, cause to be served on any person, for the time being liable under this Act to be called up for enquiry, a written notice (hereinafter referred to in this Act as a calling-up notice) stating that he is called up for enquiry into his fitness and availability for national service and requiring him to present himself to such person and at such place and at such time (not earlier than the seventh day after the date of the service of the notice) as may be specified in the notice, and to submit himself to examination by the National Service Advisory Committee constituted under section 5.

(2) Where

(2) Where a notice under sub-section (1) has been duly served on any person, the competent authority may, at any time while that person remains liable under this Act to be called up for enquiry, cancel the notice and cause to be served on him a further notice varying the original notice.

(3) A calling-up notice served on any person shall cease to have effect if, before the date on which he is thereby required to present himself, he ceases to be liable under this Act to be called up for enquiry.

(4) Such travelling and other allowances as may be prescribed shall be paid by the competent authority to any person required to present himself in accordance with any notice under this section.

5. (1) The Central Government shall constitute for such areas and in such places as it thinks fit committees (in this Act referred to as National Service Advisory Committees) to exercise the functions assigned to such committees by this Act.

National Service  
Advisory  
Committees.

(2) Each National Service Advisory Committee shall consist of not less than four members of whom one shall be an officer of one of His Majesty's Forces in India appointed by the competent authority, and the others shall be European British subjects, not being servants of the Crown, appointed by the Central Government.

(3) The Chairman of the Committee shall be appointed by the Committee.

(4) A National Service Advisory Committee shall have power to co-opt as additional members for such time or purpose as it thinks fit any persons qualified for appointment to the Committee by the Central Government.

(5) A National Service Advisory Committee may meet at such times and places as it thinks fit and shall meet when required to do so by the Central Government or by the competent authority.

(6) A National Service Advisory Committee shall have the powers of a Civil Court for the purpose of receiving

receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery of documents, and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

V of 1898.

(7) A National Service Advisory Committee may order any person called up for enquiry under sub-section (1) of section 4 to submit himself to be examined by a medical officer of the armed forces, and if he questions the decision of that officer, to appear before a medical board convened under military regulations.

Functions of  
National Service  
Advisory  
Committees.

6. The following shall be the functions of National Service Advisory Committees, namely :—

- (a) when consulted by the competent authority, to advise that authority on the exercise of that authority's powers under sub-section (1) of section 4 ;
- (b) to examine the case of any person ordered under section 4 to present himself for enquiry, and to report to the competent authority whether such person is available (i.e., can be spared without detriment to the public interest from his existing employment) and is fit for national service ;
- (c) when consulted by the Central Government, to advise the Central Government on any matter arising out of this Act which the Central Government may refer or is required by this Act to refer to the Committee.

Taking into  
service on the  
advice of a  
National Service  
Advisory  
Committee.

7. (1) When a National Service Advisory Committee reports that a person is available and fit for national service, the competent authority shall require such person to state whether he is or is not willing to undertake such service, and such person shall state accordingly.

(2) If such person states that he is willing to undertake national service the competent authority may specify the capacity for which such person is suitable, and

and if he serves in such capacity such person shall for the purposes of section 8 be deemed to be a person who has been taken into national service on the advice of a National Service Advisory Committee.

8. It shall be the duty of any employer by whom a person who has been taken into national service on the advice of a National Service Advisory Committee, or by whom a European British subject who has been called out for service in the Reserve of His Majesty's regular Naval, Military or Air Forces at any time after the 2nd day of September, 1939, and before the termination of hostilities, or by whom a person subject to this Act who with the consent of his employers was between the 2nd day of September, 1939, and the coming into force of this Act granted an emergency commission or enlisted in His Majesty's armed forces or accepted for training as a cadet at an officers' training school, was employed, to reinstate him in his employment at the termination of that service, in an occupation and under conditions not less favourable to him than those which would have been applicable to him had he not been so taken into service as aforesaid :

Provided that if for any reason the reinstatement of such person or member is represented by the employer to be impracticable, either party may refer the matter to a tribunal constituted under section 9 and that tribunal shall after consideration pass an order either exempting the employer from the provisions of this section or requiring him to re-employ such person or member on such terms as it thinks suitable, or requiring him to pay to such person or member a sum in compensation for failure to re-employ not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer ; and if any employer fails to obey the order of the tribunal, he shall be punishable with a fine which may extend to one thousand rupees ; and the Court by which an employer is convicted under this section may order him (if he has not already been so required by the tribunal) to pay the person whom he

has failed to re-employ a sum not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer, and any amount so required by the tribunal to be paid or so ordered by the Court to be paid shall be recoverable as if it were a fine imposed by such Court :

Provided further that in any proceedings under this section it shall be a defence for an employer to prove that the person formerly employed by him did not apply to the employer for reinstatement within a period of two months from the termination of the national service into which he was taken on the advice of a National Service Advisory Committee.

Tribunals.

9. (1) The Central Government shall constitute for such areas and in such places as it thinks fit tribunals to hear and decide any matters referred to it under the proviso to section 8.

(2) Each tribunal shall consist of three members to be nominated by the Central Government, of whom one who shall be Chairman of the tribunal shall be a member of a Civil Service of the Crown not lower in status than a District and Sessions Judge, one shall be a military officer not below the rank of Brigadier, and one shall be a European British subject, not being a servant of the Crown.

(3) No person serving as a member of a National Service Advisory Committee constituted under section 5 shall while so serving be a member of a tribunal.

(4) A tribunal may meet at such times and places as it thinks fit and shall meet when required to do so by the competent authority.

(5) A tribunal shall have the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

Y of 1898.

10. (1) Whoever

10. (1) Whoever wilfully fails to comply with any notice issued under section 4 or with any order given under sub-section (7) of section 5, or sub-section (1) of section 7 shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalties and  
procedure.

(2) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

11. Any notice to be served on any person for the purposes of this Act may be sent by post addressed to that person at his last known address.

Service of  
notices.

12. (1) The Central Government may, by notification in the official Gazette, make rules for the purpose of giving effect to the provisions of this Act.

Power to make  
rules.

(2) Without prejudice to the generality of the foregoing power, the Central Government may make rules prescribing the forms of the notices referred to in sub-section (1) of section 4, the amount and manner of payment of the allowances referred to in sub-section (4) of section 4 and the procedure to be followed in references to a tribunal under the proviso to section 8.

13. Nothing in this Act shall apply to any person—

Act not to  
apply to cer-  
tain persons.

- (a) for the time being confined in a prison or a lunatic asylum, or
- (b) who is under the age of eighteen or over the age of fifty.





# ACT No. XIX OF 1940.

[PASSED BY THE INDIAN LEGISLATURE]

(Received the assent of the Governor General on the  
10th April, 1940)

## An Act to amend the Defence of India Act, 1939.

WHEREAS it is expedient to amend the Defence of India Act, 1939, for the purposes hereinafter appearing;

XXXV of  
1939.

It is hereby enacted as follows :—

1. This Act may be called the Defence of India (Amendment) Act, 1940.

XXXV of  
1932.

2. In section 2 of the Defence of India Act, 1939 (hereinafter referred to as the said Act),—

Amendment of  
section 2, Act  
XXXV of  
1939.

(a) in clause (v) of sub-section (2), after the words “with foreign powers,” the words “or with States in India, or to prejudice the maintenance of peaceful conditions in the tribal areas,” shall be inserted;

(b) in sub-section (5), after the words “not being” the brackets and words “(except in the case of a Chief Commissioner’s Province)” shall be inserted.

3. In section 18 of the said Act, after the word “from”; in both places where it occurs, the words “or in respect of” shall be inserted.

Amendment of  
section 18, Act  
XXXV of  
1939.

Price anna 1 or 1½d.

GIPD—L66LD—24-6-40—6,500.



# ACT No. XX OF 1940.

[PASSED BY THE INDIAN LEGISLATURE]

(Received the assent of the Governor General on the  
10th April, 1940)

## An Act further to amend the Insurance Act, 1938.

V of 1938.

**W**HEREAS it is expedient further to amend the Insurance Act, 1938, for the purposes hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Insurance (Amendment) Act, 1940. Short title.

V of 1938.

2. To clause (3) of section 2 of the Insurance Act, 1938 (hereinafter referred to as the said Act), the following words shall be added, namely :— Amendment of section 2, Act IV of 1938.

“ and any security issued by the Government of an Indian State and specified as an approved security for the purposes of this Act by the Central Government by notification in the official Gazette ”.

3. In section 3 of the said Act,—

(a) in sub-section (1), for the word “ insurer ”, where it occurs for the first time, the word “ person ” shall be substituted, and to the sub-section the following proviso shall be added and shall be deemed always to have been added, namely :—

Amendment of section 3, Act IV of 1938.

“ Provided that in the case of an insurer who was carrying on any class of insurance business in British India at the commencement of this Act, failure to obtain a certificate of registration in accordance with the requirements of this sub-section shall not operate to

Price anna 1 or 1½d.

to invalidate any contract of insurance entered into by him if before the expiry of one month from the commencement of the Insurance (Amendment) Act, 1940, he has obtained that certificate.” ;

(b) in clause (e) of sub-section (2), and in sub-section (3), for the words “ British India ” the word “ India ” shall be substituted ;

(c) for sub-section (4) the following sub-section shall be substituted and shall be deemed always to have been substituted, namely :—

“ (4) The Superintendent of Insurance shall cancel the registration of an insurer either wholly or in so far as it relates to a particular class of insurance business, as the case may be,—

(a) if the insurer fails to comply with the provisions of section 7 or section 98 as to deposits, or

(b) if the insurer is in liquidation or is adjudged an insolvent, or

(c) if the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer, or

(d) if the whole of the deposit made in respect of a class of insurance business has been returned to the insurer under section 9.” ;

(d) in sub-section (5), for the word, brackets and figure “ sub-section (4) ” the words, brackets, letter and figure “ clause (a) of sub-section (4) ” shall be substituted and shall be deemed always to have been substituted ;

(e) after sub-section (5) the following sub-sections shall be inserted and shall be deemed always to have been inserted, namely :—

“ (5A) When the Superintendent of Insurance cancels any registration under clause (b),  
clause

clause (c) or clause (d) of sub-section (4) the cancellation shall take effect on the date on which notice of the order of cancellation is served on the insurer.

(5B) When a registration is cancelled the insurer shall not, after the cancellation has taken effect, enter into any new contracts of insurance, but all rights and liabilities in respect of contracts of insurance entered into by him before such cancellation takes effect shall, subject to the provisions of sub-section (5D), continue as if the cancellation had not taken place.

(5C) Where a registration is cancelled under clause (a) of sub-section (4), the Superintendent of Insurance may at his discretion revive the registration, if the insurer within six months from the date on which the cancellation took effect makes the deposits required by section 7 or section 98, as the case may be, and complies with any directions which may be given to him by the Superintendent of Insurance.

(5D) Where a registration is cancelled under sub-section (4) and the insurer is a company incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby, the Superintendent of Insurance shall, as soon as may be after the expiry of six months from the date on which the cancellation took effect, apply to the Court for an order to wind up the insurance company, or to wind up the affairs of the company in respect of a class of insurance business, unless the registration of the insurance company has been revived under sub-section (5C) or an application for winding up the company has been already presented to the Court. The Court may proceed as if an application

under-

under this sub-section were an application under sub-section (2) of section 53, or sub-section (1) of section 58, as the case may be.”;

(f) in sub-section (6), for the words “ the Act ” the words “ this section ” shall be substituted, and for the words “ grant the insurer ” the words “ register the insurer and grant him ” shall be substituted.

Amendment of  
section 7,  
Act IV of  
1938.

4. In section 7 of the said Act,—

(a) in sub-section (1),—

(i) for the words “ cash or approved securities estimated at the market value of the securities on the day of deposit of the amount hereafter specified, namely,” the words “ the amount hereafter specified, either in cash or in approved securities estimated at the market value of the securities on the day of deposit, or partly in cash and partly in approved securities so estimated ” shall be substituted and shall be deemed always to have been substituted ;

(ii) in clause (d), for the words “ is accident and miscellaneous insurance including workmen’s compensation and motor car insurance ” the following shall be substituted and shall be deemed always to have been substituted, namely :—

“ is miscellaneous insurance only, that is to say, insurance which is not in the opinion of the Central Government principally or wholly of any kind or kinds included in clauses (a), (b), or (c) ” ;

(iii) in clauses (e), (f), (g), (h) and (i), for the word “ includes ” the word “ is ” shall be substituted ;

(iv) the word “ and ” at the end of clause (i) and the whole of clause (j) shall be omitted ;

(v) the following proviso shall be added to the sub-section, namely :—

“ Provided that, where the business done or to be done is marine insurance only and

relates

relates exclusively to country craft or its cargo or both, the amount to be deposited under this sub-section shall be ten thousand rupees only.” ;

(b) in sub-section (7), for the words “ on the day of the first deposit made in compliance with this Act ” the words “ as at the date of the commencement of this Act ” and for the words “ in respect of the life insurance business of the insurer ” the words “ as the instalment or as part of the instalment to be made under the foregoing provisions of this section before the application for registration is made whether any such application is or is not in fact made ” shall be substituted and shall be deemed always to have been substituted, respectively ;

(c) in sub-section (8), after the words “ to the credit of the insurer and shall ” the words “ except to the extent, if any, to which the cash has been invested in securities under sub-section (9A) ” shall be inserted and shall be deemed always to have been inserted ;

(d) for sub-section (9) the following sub-sections shall be substituted and shall be deemed always to have been substituted, namely :—

“(9) The insurer may at any time replace any securities deposited by him under this section with the Reserve Bank of India either by cash or by other approved securities or partly by cash and partly by other approved securities, provided that such cash, or the value of such other approved securities estimated at the market rates prevailing at the time of replacement, or such cash together with such value, as the case may be, is not less than the value of the securities replaced estimated at the market rates prevailing when they were deposited.

(9A) The Reserve Bank of India shall, if so requested by the insurer,—

(a) sell any securities deposited by him with the Bank under this section and hold the cash realised by such sale as deposit, or

(b) invest



- (b) invest in approved securities specified by the insurer the whole or any part of a deposit held by it in cash or the whole or any part of cash received by it on the sale of or on the maturing of securities deposited by the insurer, and hold the securities in which investment is so made as deposit.

(9B) Where sub-section (9A) applies,—

- (a) if the cash realised by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) falls short of the market value of the securities<sup>s</sup> at the date on which they were deposited with the Bank, the insurer shall make good the deficiency by a further deposit either in cash or in approved securities estimated at the market value of the securities on the day on which they are deposited, or partly in cash and partly in approved securities so estimated, within a period of two months from the date on which the securities matured or were sold or where the securities matured or were sold before the 21st day of March 1940, within a period of four months from the commencement of the Insurance (Amendment) Act, 1940 ; and unless he does so the insurer shall be deemed to have failed to comply with the requirements of this section as to deposits ; and
- (b) if the cash realised by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) exceeds the market value of the securities at the date on which they were deposited with the Bank, the Central Government may, if satisfied that the full amount required to be deposited under sub-section (1) is in deposit, direct the Reserve Bank to return the excess.” ;

(c) in

(e) in sub-section (10), after the words "approved securities" the words "estimated at the market value of the securities on the day of deposit, or partly in cash and partly in such securities," shall be inserted.

5. In the proviso to sub-section (3) of section 27 of the said Act, for the words "commencement of this Act" the figures and words "30th day of June, 1939," shall be substituted.

Amendment of  
section 27,  
Act IV of  
1938.

6. In section 28 of the said Act,—

(a) in sub-section (1), after the word and figure "section 27" the words "and all other particulars necessary to establish that the requirements of that section have been complied with" shall be inserted;

Amendment of  
section 28,  
Act IV of  
1938.

(b) in sub-section (2),—

(i) after the word and figure "section 27" the following shall be inserted, namely:—

"or for the purpose of securing the particulars necessary to establish that the requirements of that section have been complied with";

(ii) for the words "and the insurer shall comply with all requisitions made by the Superintendent in that behalf" the following shall be substituted, namely:—

"The insurer shall comply with any requisition made in this behalf by the Superintendent of Insurance, and if he fails to do so within two months from the receipt of the requisition he shall be deemed to have made default in complying with the requirements of this section."

7. In section 35 of the said Act,—

(a) in sub-section (1), after the words "shall be transferred to" the words "any person or transferred to" shall be inserted and for the words "insurers concerned" the words "parties concerned" shall be substituted;

Amendment of  
section 35,  
Act IV of  
1938.

(b) in sub-section (3), for clauses (b) and (c) the following shall be substituted, namely:—

"(b) balance-sheets in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared

in

in the Form set forth in Part II of the First Schedule and in accordance with the regulations contained in Part I of that Schedule ;

- (c) actuarial reports and abstracts in respect of the life insurance business of each of the insurers so concerned, prepared in conformity with the requirements of Part II of the Fourth and Fifth Schedules and in accordance with the regulations contained in Part I of the Schedule concerned ;
- (d) a report on the proposed amalgamation or transfer, prepared by an independent actuary who has never been professionally connected with any of the parties concerned in the amalgamation or transfer at any time in the five years preceding the date on which he signs his report ;
- (e) any other reports on which the scheme of amalgamation or transfer was founded.

The balance-sheets, reports and abstracts referred to in clauses (b), (c) and (d) shall all be prepared as at the date at which the amalgamation or transfer if sanctioned by the Court is to take effect, which date shall not be more than twelve months before the date on which the application to the Court is made under this section :

Provided that if the Central Government so directs in the case of any particular insurer there may be substituted respectively for the balance-sheet, report and abstract referred to in clauses (b) and (c) prepared in accordance with this sub-section certified copies of the last balance-sheet and last report and abstract prepared in accordance with sections 11 and 13, if that balance-sheet is prepared as at a date not more than twelve months, and that report and abstract as at a date not more than five years, before the date on which the application to the Court is made under this section."

8. To section 36 of the said Act the following words shall be added, namely :—

*Amendment of section 36, Act IV of 1938.*

“ and shall make such consequential orders as are necessary to give effect to the arrangement, including orders as to the disposal of any deposit made under section 7 or section 98”.

9. In sub-section (3) of section 42 of the said Act,—

*Amendment of section 42, Act IV of 1938.*

(a) for the words “ shall expire on the 31st day of March in each year ” the words “ shall remain in force for a period of twelve months only from the date of issue ” shall be substituted ;

(b) to the sub-section the following provisos shall be added, namely :—

“ Provided that when any licence is issued or renewed within the year beginning on the day on which the Insurance (Amendment) Act, 1940, came into operation, the Superintendent of Insurance may specify the date, not being earlier than one year nor later than two years from the date of issue or renewal, on which the licence shall cease to be in force :

“ Provided further that the Central Government may, by notification in the official Gazette, make provision in respect of licences in force at the commencement of the Insurance (Amendment) Act, 1940, extending the period for which they are to remain in force by a term of from one to eleven months ”.

10. For sections 65 and 66 of the said Act the following sections shall be substituted and shall be deemed always to have been substituted, namely :—

*Substitution of new sections for sections 65 and 66, Act IV of 1938.*

‘ 65. (1) In this Part “ provident society ” means, a person who, or a body of persons (whether corporate or unincorporate) which, not being an insurer registered for the time being under Part II of this Act, carries on the business of insuring the payment, on the happening of any of the contingencies mentioned in sub-section (2), of—

*Definition of “provident society”.*

(a) an annuity of or equivalent to fifty rupees or less, payable for an uncertain period, or

(b) a gross

- (b) a gross sum of five hundred rupees or less, whether paid or payable in a lump sum or in two or more instalments over a certain period,

exclusively in both cases (a) and (b) of any profit or bonus not being a guaranteed profit or bonus.

*Explanation.*—For the purposes of this sub-section, a period is “certain” if its duration is ascertainable in advance and “uncertain” if its duration is not so ascertainable.

(2) The contingencies referred to in sub-section (1) are the following, namely :—

- (a) the birth, marriage or death of any person or the survival by a person of a stated or implied age or contingency ;
- (b) failure of issue ;
- (c) the occurrence of a social, religious or other ceremonial occasion ;
- (d) loss of or retirement from employment ;
- (e) disablement in consequence of sickness or accident ,
- (f) the necessity of providing for the education of a dependent ;
- (g) any other contingency which may be prescribed or which may be authorised by the Provincial Government with the approval of the Central Government.

(3) For the purposes of sub-sections (1) and (2)—

- (a) contracts entered into before the commencement of this Act shall not be taken into account ;
- (b) two or more policies issued to one person shall, for the purposes of determining whether the limits fixed by sub-section (1) have or have not been exceeded, be deemed to be one policy if the contingencies on the happening of which the sums are payable under the policies (whether the contingencies be the same

same or different) relate to one person only, whether he be the policy-holder or some other person.

V of 1912.

(4) Every person or body of persons for the time being registered as a provident society under the Provident Insurance Societies Act, 1912, and every person or body of persons for the time being registered as a provident society under this Act shall be deemed to be a provident society for all the purposes of this Act.

(5) If any question arises whether any person or body of persons is or is not a provident society within the meaning of this section, the Superintendent of Insurance shall decide the question and his decision shall be final.

66. No provident society shall undertake any form of insurance not falling within the limits fixed by sub-section (1) of section 65, nor shall any provident society be eligible to be registered under section 3.' Restrictions on provident societies.

11. In sub-section (2) of section 73 of the said Act, after the brackets and figure "(9)" the brackets, figures and letters "(9A), (9B)" shall be inserted, and after the word and figure "section 8" the words and figure "and of section 9" shall be inserted. Amendment of section 73, Act IV of 1938.

12. In section 84 of the said Act, before the word and figure "section 65" the words, brackets and figure "sub-section (2) of" shall be inserted. Amendment of section 84, Act IV of 1938.

13. In section 85 of the said Act—

(a) in sub-section (3)—

(i) for the words "any director or officer of the society" the words "any director, manager, managing agent, auditor, actuary, officer or partner of the society" shall be substituted;

(ii) for the words "a director or officer of the society is a director or partner" the following words shall be substituted, namely:—

"a director, manager, managing agent, actuary, officer or partner of the society is a director, manager, managing agent, actuary, officer or partner";

(b) after

(b) after sub-section (3) the following sub-section shall be inserted, namely:—

“(3A) Any loan prohibited under sub-section (3), made before and outstanding at the commencement of the Insurance (Amendment) Act, 1940, shall be repaid before the 1st day of January, 1941, and in case of default the director, manager, managing agent, auditor, actuary, officer or partner who has received the loan or is connected with the concern which has received the loan, as the case may be, shall cease to hold office in or be a partner of the society and shall be ineligible to hold office in or be a partner of the society until the loan is repaid.”;

(c) in sub-section (4), for the words “or officer” the words “manager, managing agent, auditor, actuary, officer or partner” shall be substituted.

14. After section 106 of the said Act the following section shall be inserted, namely:—

“106A. (1) When application is made to the Court for the making of any order to which this section applies the Court shall, unless the Superintendent of Insurance has himself made the application or has been made a party thereto, send a copy of the application together with intimation of the date fixed for the hearing thereof to the Superintendent of Insurance, and shall give him an opportunity of being heard.

(2) The orders to which this section applies are the following, namely:—

- (a) an order for the attachment in execution of a decree of any deposit made under section 7 or section 98;
- (b) an order under section 9 or section 59 for the return of any such deposit;
- (c) an order under section 36 sanctioning any arrangement for the transfer or amalgamation of life insurance business or any order consequential thereon;
- (d) an order for the winding up of an insurance company or a provident society;
- (e) an

Insertion of  
new section  
106A in Act  
IV of 1938.

Notice to and  
hearing of  
Superintendent  
of Insurance.

(e) an order under section 58 confirming a scheme for the partial winding up of an insurance company ;

(f) an order under section 89 reducing the amount of the insurance contracts of a provident society."

15. After section 110 of the said Act the following sections shall be inserted, namely :—

Insertion of new sections 110A and 110B in Act IV of 1938.

" 110A. The Superintendent of Insurance may by general or special order delegate any of his powers or duties under this Act to any person subordinate to him. The exercise or discharge of any of the powers or duties so delegated shall be subject to such restrictions, limitations and conditions, if any, as the Superintendent of Insurance may impose, and shall be subject to his control and revision.

Delegation of powers and duties of Superintendent of Insurance.

110B. Every document which is required by this Act or by any rule made thereunder to be signed by the Superintendent of Insurance or by any person subordinate to him or by any officer authorised by him under sub-section (1) of section 42 shall be deemed to be properly signed, if it bears a facsimile of the signature of such Superintendent, person or officer printed, engraved, lithographed or impressed by any other mechanical process approved by the Central Government."

Signature of documents.

16. In section 114 of the said Act,—

Amendment of section 114, Act IV of 1938.

(a) in sub-section (2),—

(i) in clause (h), before the word and figure " section 65 " the words, brackets and figure " sub-section (2) of " shall be inserted ;

(ii) the word " and " at the end of clause (k) shall be omitted ;

(iii) after clause (l) the following clause shall be inserted, namely :—

" (m) any other matter which is to be or may be prescribed . " ;

(iv) the proviso shall be omitted ;

(b) sub-section



(b) sub-section (3) shall be re-numbered as sub-section (4) and the following shall be inserted as sub-section (3), namely :—

“(3) Every rule made under this section shall be laid as soon as may be after it is made before each of the Chambers of the Central Legislature, while it is in session, for a total period of one month which may be comprised in one session or in two or more sessions, and if before the expiry of that period, or where the period for which the rule is so laid before one Chamber does not coincide with that for which it is so laid before the other, before the expiry of the later of these periods, both Chambers agree in making any modification in the rule or both Chambers agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be.”

Amendment of  
section 116,  
Act IV of  
1938.

17. In section 116 of the said Act,—

(a) for the words, figures and brackets “from the provisions of section 7 or section 98 relating to deposits or from the provisions of sub-section (2) of section 27 relating to the keeping of assets in India” the words “from any of the provisions of this Act which may be specified in the notification” shall be substituted ;

(b) to the section the following proviso shall be added, namely :—

“Provided that no such notification shall be issued unless the Central Government is satisfied that insurers constituted, incorporated or domiciled in British India are under the law or practice in such State entitled therein to benefits corresponding to those conferred by the notification or to benefits which in the opinion of the Central Government are at least equivalent thereto.”

18. In

18. In Form A contained in Part II of the First Schedule to the said Act, in the first column, in the entry "Accident and Miscellaneous Insurance Business Account" the words "Accident and" shall be omitted.

Amendment of  
First Schedule,  
Act IV of  
1938.

19. In the Third Schedule to the said Act—

Amendment of  
Third Schedule  
Act IV of  
1938.

(a) in Part I, in regulation 2 the words "accident and" and the words "including workmen's compensation and motor car insurance" shall be omitted;

(b) in Part II,—

(i) in note (a) appended to Form D, for the words "payable outside India" the words "ordinarily paid outside India" shall be substituted, and the following sentence shall be added, namely :—

"If any question arises whether any premiums are ordinarily paid outside India, the Superintendent of Insurance shall decide the question and his decision shall be final." ;

(ii) in the heading to Form F, the words "*Accident and*" and the words "*including Workmen's Compensation and Motor Car Insurance Business*" shall be omitted.



# ACT No. XXI of 1940.

[PASSED BY THE INDIAN LEGISLATURE]

(Received the assent of the Governor General on the  
10th April, 1940)

An Act further to amend the Indian Tariff Act, 1934.

XXXII of  
1934.

WHEREAS it is expedient further to amend the Indian Tariff Act, 1934, for the purpose hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Indian Tariff Short title.  
(Amendment) Act, 1940.

XXXII of  
1934.

2. In the First Schedule to the Indian Tariff Act, Amendment of First  
1934, in Item No. 13 (1), in the third column the word Schedule,  
“ Revenue ” shall be inserted, and in the fourth Act XXXII  
column for the word “ Free ” the figure and words of 1934.  
“ 3 per cent. *ad valorem* ” shall be substituted.



# ACT No. XXII of 1940.

[PASSED BY THE INDIAN LEGISLATURE]

*(Received the assent of the Governor General on the  
10th April, 1940)*

**An Act further to amend the Indian Tariff Act, 1934.**

XXXII of  
1934.

**W**HEREAS it is expedient further to amend the Indian Tariff Act, 1934, for the purpose hereinafter appearing;

It is hereby enacted as follows :—

1. This Act may be called the Indian Tariff (Second Short title. Amendment) Act, 1940.

XXXII of  
1934.

\*2. In the First Schedule to the Indian Tariff Act, 1934,—

Amendment  
of the First  
Schedule,  
Act XXXII  
of 1934.

(a) in Items Nos. 10 (1), 10 (2) and 11 (1), in the last column, for the figure “1940” the figure “1941” shall be substituted;

(b) in Items Nos. 46, 46 (1), 47, 47 (1), 48 and 48 (4), in the last column, for the figure “1940” the figure “1942” shall be substituted.

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\*This section came into effect on the 22nd March, 1940, by virtue of a declaration inserted in the Bill under the Provisional Collection of Taxes Act, 1931 (XVI of 1931).



GOVERNMENT OF INDIA  
LEGISLATIVE DEPARTMENT

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# THE DRUGS ACT, 1940

(XXIII OF 1940)

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## THE DRUGS ACT, 1940.

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# ACT No. XXIII OF 1940.

[PASSED BY THE INDIAN LEGISLATURE]

*(Received the assent of the Governor General on the  
10th April, 1940)*

**An Act to regulate the import, manufacture, distribution  
and sale of drugs.**

**W**HEREAS it is expedient to regulate the import  
into, and the manufacture, distribution and sale  
in, British India of drugs ;

AND WHEREAS the Legislatures of all the Provinces  
have passed resolutions in terms of section 103 of the  
Government of India Act, 1935, in relation to such of  
the above-mentioned matters and matters ancillary  
thereto as are enumerated in List II of the Seventh  
Schedule to the said Act ;

It is hereby enacted as follows :—

## CHAPTER I.

### INTRODUCTORY.

1. (1) This Act may be called the Drugs Act, 1940. Short title,  
extent and  
commence-  
ment.

(2) It extends to the whole of British India.

(3) It shall come into force at once ; but Chapter III  
shall take effect only from such date as the Central  
Government may, by notification in the official Gazette,  
appoint in this behalf, and Chapter IV shall take effect  
in a particular Province only from such date as the  
Provincial Government may, by like notification, appoint  
in this behalf.

2. The provisions of this Act shall be in addition to, Application of  
other laws not  
barred.  
and not in derogation of, the Dangerous Drugs Act,  
1930, and any other law for the time being in force.

11 of 1930.

3. In this Act, unless there is anything repugnant Definitions.  
in the subject or context,—

(a) “ the Board ” means the Drugs Technical  
Advisory Board constituted under section 5 ;

(b) “ drug ”

- (b) "drug" includes all medicines for internal or external use of human beings or animals, and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals, other than medicines and substances exclusively used or prepared for use in accordance with the Ayurvedic or Unani systems of medicine ;
- (c) "to import", with its grammatical variations and cognate expressions, means to bring into British India ;
- (d) "patent or proprietary medicine" means a drug which is a remedy or prescription prepared for internal or external use of human beings or animals, and which is not for the time being recognised by the Permanent Commission on Biological Standardisation of the League of Nations or in the latest edition of the British Pharmacopœia or the British Pharmaceutical Codex or any other pharmacopœia authorised in this behalf by the Central Government after consultation with the Board ;
- (e) "prescribed" means prescribed by rules made under Chapter II or Chapter III by the Central Government, or under Chapter IV by the Provincial Government.

**Presumption  
as to poisonous  
substances.**

4. Any substance specified as poisonous by rule made under Chapter III or Chapter IV shall be deemed to be a poisonous substance for the purposes of Chapter III or Chapter IV, as the case may be.

## CHAPTER II.

**THE DRUGS TECHNICAL ADVISORY BOARD, THE CENTRAL DRUGS LABORATORY AND THE DRUGS CONSULTATIVE COMMITTEE.**

**The Drugs  
Technical  
Advisory  
Board.**

5. (1) The Central Government shall, as soon as may be, constitute a Board (to be called the Drugs Technical Advisory Board) to advise the Central Government  
and

and the Provincial Governments on technical matters arising out of the administration of this Act and to carry out the other functions assigned to it by this Act.

(2) The Board shall consist of the following members, namely :—

- (i) the Director-General, Indian Medical Service, *ex officio*, who shall be Chairman ;
- (ii) the Director of the Central Drugs Laboratory, *ex officio* ;
- (iii) the Director of the Central Research Institute, *ex officio* ;
- (iv) the Director of the Imperial Veterinary Research Institute, Muktesar, *ex officio* ;
- (v) the Chief Chemist, Central Revenues, *ex officio* ;
- (vi) two persons holding the appointment of Government Analyst under this Act, to be nominated by the Central Government ;
- (vii) one pharmacologist and one pharmaceutical chemist to be elected by the Scientific Advisory Board of the Indian Research Fund Association ;
- (viii) three persons to be elected by the Medical Council of India, two of whom shall be from among teachers of medicine or therapeutics on the staff of a university or college in British India providing a course of study which qualifies for admission to the examination for a degree which is a recognised qualification under the Indian Medical Council Act, 1933, and one shall be a registered medical practitioner not being a servant of the Crown ;
- (ix) one member of the pharmaceutical profession to be nominated by the Central Government ;
- (x) two persons to be elected by the Council of the Indian Chemical Society ;
- (xi) one

(xi) one person to be elected by the Central Council of the Indian Medical Association and one person to be elected by the branches in India of the British Medical Association.

(3) The nominated and elected members of the Board shall hold office for three years, but shall be eligible for re-nomination and re-election.

(4) The Board may, subject to the previous approval of the Central Government, make by-laws fixing a quorum and regulating its own procedure and the conduct of all business to be transacted by it.

(5) The Board may constitute sub-committees and may appoint to such sub-committees for such periods, not exceeding three years, as it may decide, or temporarily for the consideration of particular matters, persons who are not members of the Board.

(6) The functions of the Board may be exercised notwithstanding any vacancy therein.

(7) The Central Government shall appoint a person to be Secretary of the Board and shall provide the Board with such clerical and other staff as the Central Government considers necessary.

**The Central  
Drugs Laboratory.**

6. (1) The Central Government shall, as soon as may be, establish a Central Drugs Laboratory under the control of a Director to be appointed by the Central Government, to carry out the functions entrusted to it by this Act or any rules made under this Chapter :

Provided that, if the Central Government so prescribes, the functions of the Central Drugs Laboratory in respect of any drug or class of drugs shall be carried out at the Central Research Institute, Kasauli, or at any other prescribed Laboratory and the functions of the Director of the Central Drugs Laboratory in respect of such drug or class of drugs shall be exercised by the Director of that institute or of that other Laboratory, as the case may be.

(2) The Central Government may, after consultation with the Board, make rules prescribing—

- (a) the functions of the Central Drugs Laboratory ;
- (b) the

- (b) the procedure for the grant of certificates of registration under this Act by the said Laboratory in respect of patent or proprietary medicines not having displayed on the label or container thereof the true formula or list of ingredients contained therein in a manner readily intelligible to members of the medical profession, the forms of such certificates and the fees payable therefor ;
- (c) the procedure for preserving the secrecy of the formulae of patent or proprietary medicines when disclosed to the said Laboratory under this Act ;
- (d) the procedure for the submission to the said Laboratory under Chapter IV of samples of drugs for analysis or test, the forms of the Laboratory's reports thereon and the fees payable in respect of such reports ;
- (e) such other matters as may be necessary or expedient to enable the said Laboratory to carry out its functions ;
- (f) the matters necessary to be prescribed for the purposes of the proviso to sub-section (1).

7. (1) The Central Government may constitute an advisory committee to be called "the Drugs Consultative Committee" to advise the Central Government; the Provincial Governments and the Drugs Technical Advisory Board on any matter tending to secure uniformity throughout the Provinces in the administration of this Act.

Drugs  
Consultative  
Committee.

(2) The Drugs Consultative Committee shall consist of two representatives of the Central Government to be nominated by that Government and one representative of each Provincial Government to be nominated by the Provincial Government concerned.

(3) The Drugs Consultative Committee shall meet when required to do so by the Central Government and shall have power to regulate its own procedure.

#### CHAPTER III.



## CHAPTER III.

## IMPORT OF DRUGS.

Standards of  
quality.

8. (1) For the purposes of this Chapter the expression "standard quality" when applied to a drug means that the drug complies with the standard set out in the Schedule.

(2) The Central Government, after consultation with the Board and after giving by notification in the official Gazette not less than three months' notice of its intention so to do, may by a like notification add to or otherwise amend the Schedule for the purposes of this Chapter, and thereupon the Schedule shall be deemed to be amended accordingly.

Misbranded  
drugs.

9. For the purposes of this Chapter a drug shall be deemed to be misbranded—

- (a) if it is an imitation of, or substitute for, or resembles in a manner likely to deceive, another drug, or bears upon it or upon its label or container the name of another drug, unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug; or
- (b) if it purports to be the product of a place or country of which it is not truly a product; or
- (c) if it is imported under a name which belongs to another drug; or
- (d) if it is so coloured, coated, powdered or polished that damage is concealed, or if it is made to appear of better or greater therapeutic value than it really is; or
- (e) if it is not labelled in the prescribed manner; or
- (f) if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular; or
- (g) if the label or container bears the name of an individual or company purporting to be

be the manufacturer or producer of the drug, which individual or company is fictitious or does not exist.

10. From such date as may be fixed by the Central Government by notification in the official Gazette in this behalf, no person shall import—

Prohibition of  
import of  
certain drugs

- (a) any drug which is not of standard quality ;
- (b) any misbranded drug ;
- (c) any drug for the import of which a licence is prescribed, otherwise than under, and in accordance with, such licence ;
- (d) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof either the true formula or list of ingredients contained in it in a manner readily intelligible to members of the medical profession, or the number of the certificate of registration granted in the prescribed manner in respect of such medicine by the Central Drugs Laboratory after being correctly informed of the formula of such medicine ;
- (e) any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims to cure or mitigate any such disease or ailment, or to have any such other effect, as may be prescribed ;
- (f) any drug the import of which is prohibited by rule made under this Chapter :

Provided that nothing in this section shall apply to the import, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis or for personal use :

Provided further that the Central Government may, after consultation with the Board, by notification in the official Gazette, permit, subject to any conditions specified in the notification, the import of any drug or class of drugs not being of standard quality.

*Explanation.*—

*Explanation.*—The formula or list of ingredients mentioned in clause (d) shall be deemed to be true and a sufficient compliance with that sub-clause if, without disclosing a full and detailed recipe of the ingredients, it indicates correctly all potent or poisonous substances contained therein together with an approximate statement of the composition of the medicine.

Application of law relating to sea customs and powers of Customs officers.

11. (1) The law for the time being in force relating to sea customs and to goods, the import of which is prohibited by section 18 of the Sea Customs Act, 1878, VIII of 1878. shall, subject to the provisions of section 13 of this Act, apply in respect of drugs the import of which is prohibited under this Chapter, and officers of Customs and officers empowered under that Act to perform the duties imposed thereby on a Customs Collector and other officers of Customs, shall have the same powers in respect of such drugs as they have for the time being in respect of such goods as aforesaid.

(2) Without prejudice to the provisions of subsection (1), the Customs Collector, or any servant of the Crown authorised by the Provincial Government in this behalf, may detain any imported package which he suspects to contain any drug the import of which is prohibited under this Chapter, and shall forthwith report such detention to the Director of the Central Drugs Laboratory and, if required by him, forward the package or samples of any suspected drug found therein to the said Laboratory.

Power of Central Government to make rules.

12. (1) The Central Government may, after consultation with the Board and after previous publication by notification in the official Gazette, make rules for the purpose of giving effect to the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may—

(a) specify the drugs or classes of drugs for the import of which a licence is required, and prescribe the form and conditions of such licences, the authority empowered to issue the same, and the fees payable therefor ;

(b) prescribe

- (b) prescribe the methods of test or analysis to be employed in determining whether a drug is of standard quality ;
- (c) prescribe, in respect of biological and organo-metallic compounds, the units or methods of standardisation ;
- (d) specify the diseases or ailments which an imported drug may not purport or claim to cure or mitigate and such other effects which such drug may not purport or claim to have ;
- (e) prescribe the conditions subject to which small quantities of drugs, the import of which is otherwise prohibited under this Chapter, may be imported for the purpose of examination, test or analysis or for personal use ;
- (f) prescribe the places at which drugs may be imported, and prohibit their import at any other place ;
- (g) require the date of manufacture and the date of expiry of potency to be clearly and truly stated on the label or container of any specified imported drug or class of such drug, and prohibit the import of the said drug or class of drug after the expiry of a specified period from the date of manufacture ;
- (h) regulate the submission by importers, and the securing, of samples of drugs for examination, test or analysis by the Central Drugs Laboratory, and prescribe the fees, if any, payable for such examination, test or analysis ;
- (i) prescribe the evidence to be supplied, whether by accompanying documents or otherwise, of the quality of drugs sought to be imported, the procedure of officers of Customs in dealing with such evidence, and the manner of storage at places of import of drugs detained pending admission ;
- (j) provide

- (j) provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Chapter and the rules made thereunder of drugs imported for the purpose only of transport through, and export from, British India ;
- (k) prescribe the conditions to be observed in the packing in bottles, packages or other containers of imported drugs ;
- (l) regulate the mode of labelling drugs imported for sale in packages, and prescribe the matters which shall or shall not be included in such labels ;
- (m) prescribe the maximum proportion of any poisonous substance which may be added to or contained in any imported drug, prohibit the import of any drug in which that proportion is exceeded, and specify substances which shall be deemed to be poisonous for the purposes of this Chapter and the rules made thereunder ;
- (n) require that the accepted scientific name of any specified drug shall be displayed in the prescribed manner on the label or wrapper of any imported patent or proprietary medicine containing such drug ;
- (o) provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Chapter or the rules made thereunder of any specified drug or class of drugs.

**Offences.**

13. (1) Whoever contravenes any of the provisions of this Chapter or of any rule made thereunder shall, in addition to any penalty to which he may be liable under the provision of section 11, be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever, having been convicted under sub-section (1), is again convicted under that sub-section shall

shall, in addition to any penalty as aforesaid, be punishable with imprisonment which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

14. Where any offence punishable under section 13 <sup>Confiscation.</sup> has been committed, the consignment of the drug in respect of which the offence has been committed shall be liable to confiscation.

15. No Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class shall try an offence punishable under section 13. <sup>Jurisdiction.</sup>

#### CHAPTER IV.

##### MANUFACTURE, SALE AND DISTRIBUTION OF DRUGS.

16. (1) For the purposes of this Chapter the expression "standard quality" when applied to a drug means <sup>Standards of quality.</sup> that the drug complies with the standard set out in the Schedule.

(2) The Provincial Government, after consultation with the Board and after giving by notification in the official Gazette not less than three months' notice of its intention so to do, may by a like notification add to or otherwise amend the Schedule for the purposes of this Chapter, and thereupon the Schedule shall be deemed to be amended accordingly.

17. For the purposes of this Chapter a drug shall be <sup>Misbranded drugs.</sup> deemed to be misbranded—

- (a) if it is an imitation of, or substitute for, or resembles in a manner likely to deceive, another drug, or bears upon it or upon its label or container the name of another drug, unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug ; or
- (b) if it purports to be the product of a place or country of which it is not truly a product ; or
- (c) if it is sold, or offered or exposed for sale, under a name which belongs to another drug ; or

(d) if

- (d) if it is so coloured, coated, powdered or polished that damage is concealed, or if it is made to appear of better or greater therapeutic value than it really is ; or
- (e) if it is not labelled in the prescribed manner ; or
- (f) if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular ; or
- (g) if the label or container bears the name of an individual or company purporting to be the manufacturer or producer of the drug, which individual or company is fictitious or does not exist.

Prohibition of  
manufacture  
and sale of  
certain drugs.

18. From such date as may be fixed by the Provincial Government by notification in the official Gazette in this behalf, no person shall himself or by any other person on his behalf—

- (a) manufacture for sale, or sell, or stock or exhibit for sale, or distribute—
  - (i) any drug which is not of standard quality ;
  - (ii) any misbranded drug ;
  - (iii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof either the true formula or list of ingredients contained in it in a manner readily intelligible to members of the medical profession, or the number of the certificate of registration granted, in the manner prescribed by the Central Government, in respect of such medicine by the Central Drugs Laboratory after being correctly informed of the formula of such medicine ;
  - (iv) any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims to cure or mitigate any such disease or ailment, or to have any such other effect as may be prescribed ;

(v) any

- (v) any drug, in contravention of any of the provisions of this Chapter or any rule made thereunder ;
- (b) sell, or stock or exhibit for sale, or distribute any drug which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder ;
- (c) manufacture for sale, or sell, or stock or exhibit for sale, or distribute any drug, except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter :

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis :

Provided further that the Provincial Government may, after consultation with the Board, by notification in the official Gazette, permit, subject to any conditions specified in the notification, the manufacture for sale, sale or distribution of any drug or class of drugs not being of standard quality.

*Explanation.*—The formula or list of ingredients mentioned in sub-clause (iii) of clause (a) shall be deemed to be true and a sufficient compliance with that sub-clause if, without disclosing a full and detailed recipe of the ingredients, it indicates correctly all the potent or poisonous substances contained therein together with an approximate statement of the composition of the medicine.

19. (1) Save as hereinafter provided in this section, <sup>Pleas.</sup> it shall be no defence in a prosecution under this Chapter to prove merely that the accused was ignorant of the nature, substance or quality of the drug in respect of which the offence has been committed or of the circumstances of its manufacture or import, or that a purchaser, having bought only for the purpose of test or analysis, has not been prejudiced by the sale.



(2) For the purposes of section 18 a drug shall not be deemed to be misbranded or to be below standard quality only by reason of the fact that—

(a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or preparation of the drug as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the drug or to conceal its inferior quality or other defects ; or

(b) in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it : provided that this clause shall not apply in relation to any sale or distribution of the drug occurring after the vendor or distributor became aware of such intermixture.

(3) A person, not being the manufacturer of a drug or his agent for the distribution thereof, shall not be liable for a contravention of section 18 if he proves—

(a) that he did not know, and could not with reasonable diligence have ascertained, that the drug in any way contravened the provisions of that section, and that the drug while in his possession remained in the same state as when he acquired it ; or

(b) that he acquired the drug from a person resident in British India under a written warranty in the prescribed form and signed by such person that the drug does not in any way contravene the provisions of section 18, and that the drug while in his possession remained in the same state as when he acquired it :

Provided that a defence under clause (b) shall be open to a person only—

(i) if he has, within seven days of the service on him of the summons, sent to the Inspector a copy of the warranty with a written notice stating that he intends to rely upon it and giving

giving the name and address of the warrantor, and

- (ii) if he proves that he has, within the same period, sent written notice of such intention to the said warrantor.

20. The Provincial Government may, by notification in the official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Government Analysts for such areas and in respect of such drugs or classes of drugs as may be specified in the notification :

Provided that a servant of the Crown serving under the Central Government or another Provincial Government shall not be so appointed without the previous consent of the Government under which he is serving.

21. (1) The Provincial Government may, by notification in the official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Inspectors for the purposes of this Chapter within such local limits as it may assign to them respectively :

Provided that no person who has any financial interest in the manufacture, import or sale of drugs shall be appointed to be an Inspector under this sub-section.

XLV of 1860.

(2) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code, and shall be officially subordinate to such authority as the Provincial Government may specify in this behalf.

22. Subject to the provisions of section 23 and of any rules made by the Provincial Government in this behalf, an Inspector may, within the local limits for which he is appointed,—

- (a) inspect any premises wherein any drug is being manufactured and in the case of sera, vaccines and any other drug prescribed in this behalf the plant and process of manufacture and the means employed for standardising and testing the drug ;
- (b) take samples of any drug which is being manufactured, or being sold or is stocked or exhibited for sale, or is being distributed ;

(c) where

- (c) where he has reason to believe that any drug which is being manufactured for sale, or being sold or is stocked or exhibited for sale, or is being distributed, contravenes any of the provisions of section 18, order in writing the person, in whose possession such drug may be, not to dispose of any stock of such drug for a specified period not exceeding ten days, or, unless the alleged contravention is such that the defect may be removed by the possessor of the drug, seize the stock of such drug :

Provided that the Inspector shall not take any action under this clause unless he has reported the facts to the District Magistrate or the Chief Presidency Magistrate and has been authorized by such Magistrate to take such action ;

- (d) for any of the aforesaid purposes enter at all reasonable times, with such assistants, if any, as he considers necessary, any premises wherein any drug is being manufactured, or being sold or is stocked or exhibited for sale, or is kept for distribution ;
- (e) exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made thereunder.

**Procedure of  
Inspectors.**

**23. (1)** Where an Inspector takes any sample of a drug under this Chapter, he shall tender the fair price thereof and may require a written acknowledgment therefor.

(2) Where the price tendered under sub-section (1) is refused, or where the Inspector seizes the stock of any drug under clause (c) of section 22, he shall tender a receipt therefor in the prescribed form.

(3) Where an Inspector takes a sample of a drug for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it and, in the presence of such person unless he wilfully absents himself, shall divide the sample into four portions and effectively seal

seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked :

Provided that where the sample is taken from premises whereon the drug is being manufactured, it shall be necessary to divide the sample into three portions only :

Provided further that where the drug is made up in containers of small volume, instead of dividing a sample as aforesaid, the Inspector may, and if the drug be such that it is likely to deteriorate or be otherwise damaged by exposure shall, take three or four, as the case may be, of the said containers after suitably marking the same and, where necessary, sealing them.

(4) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and dispose of the same as follows :—

- (i) one portion or container he shall forthwith send to the Government Analyst for test or analysis ;
- (ii) the second he shall produce to the Court before which proceedings, if any, are instituted in respect of the drug ; and
- (iii) the third, where taken, he shall send to the warrantor, if any, named under the proviso to sub-section (3) of section 19.

(5) Where an Inspector takes any action under clause (c) of section 22,—

- (a) he shall use all despatch in ascertaining whether or not the drug contravenes any of the provisions of section 18 and, if it is ascertained that the drug does not so contravene, forthwith revoke the order passed under the said clause or, as the case may be, take such action as may be necessary for the return of the stock seized ;
- (b) if he seizes the stock of the drug, he shall as soon as may be inform a Magistrate and take his orders as to the custody thereof ;

(c) without

- (c) without prejudice to the institution of any prosecution, if the alleged contravention be such that the defect may be remedied by the possessor of the drug, he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order under the said clause.

Persons bound to disclose place where drugs are manufactured or kept.

24. Every person for the time being in charge of any premises whereon any drug is being manufactured or is kept for sale or distribution shall, on being required by an Inspector so to do, be legally bound to disclose to the Inspector the place where the drug is being manufactured or is kept, as the case may be.

Reports of Government Analysts.

25. (1) The Government Analyst to whom a sample of any drug has been submitted for test or analysis under sub-section (4) of section 23, shall deliver to the Inspector submitting it a signed report in triplicate in the prescribed form.

(2) The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and another copy to the warrantor, if any, named under the proviso to sub-section (3) of section 19, and shall retain the third copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken or the said warrantor has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.

(4) Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused, cause the sample of the drug produced

produced before the Magistrate under sub-section (4) of section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Drugs Laboratory under sub-section (4) shall be paid by the complainant or accused as the Court shall direct.

26. Any person shall, on application in the prescribed manner and on payment of the prescribed fee, be entitled to submit for test or analysis to a Government Analyst any drug purchased by him and to receive a report of such test or analysis signed by the Government Analyst.

Purchaser of drug enabled to obtain test or analysis.

27. Whoever himself or by any other person on his behalf manufactures for sale, sells, stocks or exhibits for sale, or distributes any drug in contravention of any of the provisions of this Chapter or any rule made thereunder shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

Penalty for manufacture, sale, etc. of drugs in contravention of this Chapter.

28. (1) Whoever, in respect of any drug sold by him whether as principal or agent, gives to the purchaser a false warranty that the drug does not in any way contravene the provisions of section 18 shall, unless he proves that when he gave the warranty he had good reason to believe the same to be true, be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

Penalties for giving false warranty or misuse of warranty.

(2) Whoever applies or permits to be applied to any drug sold, or stocked or exhibited for sale, by him, whether on the container or label or in any other manner, a warranty given in respect of any other drug, shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

29. Whoever

Penalty for use  
of Government  
Analyst's  
report for  
advertising.

29. Whoever uses any report of a test or analysis made by the Central Drugs Laboratory or by a Government Analyst, or any extract from such report, for the purpose of advertising any drug, shall be punishable with fine which may extend to five hundred rupees.

Penalty for  
subsequent  
offences.

30. Whoever, having been convicted of any offence under section 27 or section 28 or section 29, is again convicted of an offence under the same section shall be punishable with imprisonment which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Confiscation.

31. Where any person has been convicted under this Chapter for contravening any such provision of this Chapter or any rule made thereunder as may be specified by rule made in this behalf, the stock of the drug in respect of which the contravention has been made shall be liable to confiscation.

Cognisance  
of offences.

32. (1) No prosecution under this Chapter shall be instituted except by an Inspector.

(2) No Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class shall try an offence punishable under this Chapter.

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter.

Power of Pro-  
vincial Gov-  
ernment to  
make rules.

33. (1) The Provincial Government may, after consultation with the Board and after previous publication by notification in the official Gazette, make rules for the purpose of giving effect to the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may—

- (a) provide for the establishment of laboratories for testing and analysing drugs ;
- (b) prescribe the qualifications and duties of Government Analysts and the qualifications of Inspectors ;
- (c) prescribe the methods of test or analysis to be employed in determining whether a drug is of standard quality ;

(d) prescribe,

- (d) prescribe, in respect of biological and organo-metallic compounds, the units or methods of standardisation ;
- (e) prescribe the forms of licences for the manufacture for sale, for the sale and for the distribution of drugs or any specified drug or class of drugs, the form of application for such licences, the conditions subject to which such licences may be issued, the authority empowered to issue the same and the fees payable therefor ;
- (f) specify the diseases or ailments which a drug may not purport or claim to cure or mitigate and such other effects which a drug may not purport or claim to have ;
- (g) prescribe the conditions subject to which small quantities of drugs may be manufactured for the purpose of examination, test or analysis ;
- (h) require the date of manufacture and the date of expiry of potency to be clearly and truly stated on the label or container of any specified drug or class of drugs, and prohibit the sale, stocking or exhibition for sale, or distribution of the said drug or class of drugs after the expiry of a specified period from the date of manufacture or after the expiry of the date of potency ;
- (i) prescribe the conditions to be observed in the packing in bottles, packages and other containers of drugs, and prohibit the sale, stocking or exhibition for sale, or distribution of drugs packed in contravention of such conditions ;
- (j) regulate the mode of labelling packed drugs, and prescribe the matters which shall or shall not be included in such labels ;
- (k) prescribe the maximum proportion of any poisonous substance which may be added to or contained in any drug, prohibit the manufacture, sale or stocking or exhibition for sale,



sale, or distribution of any drug in which that proportion is exceeded, and specify substances which shall be deemed to be poisonous for the purposes of this Chapter and the rules made thereunder ;

- (l) require that the accepted scientific name of any specified drug shall be displayed in the prescribed manner on the label or wrapper of any patent or proprietary medicine containing such drug ;
- (m) prescribe the form of warranty referred to in sub-section (1) of section 19 ;
- (n) regulate the powers and duties of Inspectors ;
- (o) prescribe the forms of report to be given by Government Analysts, and the manner of application for test or analysis under section 26 and the fees payable therefor ;
- (p) specify the offences against this Chapter or any rule made thereunder in relation to which the stock of the drug shall be liable to confiscation under section 31 ;
- (q) provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Chapter or the rules made thereunder of any specified drug or class of drugs.

Protection to  
persons acting  
under this  
Chapter.

34. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Chapter.

THE SCHEDULE.

## THE SCHEDULE.

(See sections 8 and 16.)

*Standards to be complied with by imported drugs and by drugs manufactured for sale, sold, stocked or exhibited for sale, or distributed.*

Class of drug.	Standard to be complied with.
1. Patent or proprietary medicines.	The formula or list of ingredients displayed in the prescribed manner on the label or container, or the formula disclosed to the Central Drugs Laboratory, as the case may be.
2. Substances commonly known as vaccines, sera, toxins, toxoids, antitoxins, and antigens and biological products of such nature.	The standards maintained at the National Institute for Medical Research, London, and such further standards of strength, quality and purity as may be prescribed.
3. Vitamins, hormones and analogous products.	The standards maintained at the National Institute for Medical Research, London, and such further standards of strength, quality and purity as may be prescribed.
4. Other drugs . . .	The standards of identity, purity and strength specified in the latest edition of the British Pharmacopœia or the British Pharmaceutical Codex or any other prescribed pharmacopœia, or adopted by the Permanent Commission on Biological Standardisation of the League of Nations.



# ACT No. XXIV of 1940.

[PASSED BY THE INDIAN LEGISLATURE]

*(Received the assent of the Governor General on the  
10th April, 1940)*

## An Act further to amend the Indian Mines Act, 1923.

IV of 1923. **W**HEREAS it is expedient further to amend the Indian Mines Act, 1923, for the purposes herein-after appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Indian Mines (Amend- short title.  
ment) Act, 1940.

IV of 1923. 2. In clause (a) of sub-section (1) of section 10 of the Indian Mines Act, 1923 (hereinafter referred to as the said Act), for the words “the Government” the words “the Crown” shall be substituted. Amendment of section 10, Act IV of 1923.

3. In sub-section (1A) of section 19 of the said Act— Amendment of section 19, Act IV of 1923.  
(a) the brackets and letter “(a)” at the beginning, and the word “or” at the end of clause (a) shall be omitted ; and

(b) clause (b) shall be omitted.

4. In section 29 of the said Act, after clause (k) the following clause shall be inserted, namely :— Amendment of section 29, Act IV of 1923.

“(kk) for prohibiting the employment in a mine either as manager or in any other specified capacity of any persons except persons paid by the owner of the mine and directly answerable to the owner or manager of the mine ;”.



# ACT No. XXV OF 1940.

[PASSED BY THE INDIAN LEGISLATURE]

(Received the assent of the Governor General on the  
10th April, 1940)

## An Act further to amend the Petroleum Act, 1934.

XXX of 1934. **W**HEREAS it is expedient further to amend the Petroleum Act, 1934, for the purposes hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Petroleum (Amend- Short title.  
ment) Act, 1940.

XXX of 1934. 2. In section 9 of the Petroleum Act, 1934 (herein- Amendment  
after referred to as the said Act),— of section 9,  
Act XXX of  
1934.

(a) to sub-section (1) the following proviso shall be added, namely :—

“ Provided further that the total quantity of dangerous petroleum which may be stored without a licence under clause (b) shall not exceed twenty gallons, notwithstanding that such owner may possess other motor conveyances or engines.” ;

(b) in sub-section (2), after the word, brackets and letter “ clause (b) ” the words, brackets and figure “ of sub-section (1) ” shall be inserted.

3. In section 28 of the said Act,—

(a) in sub-section (1), after the word “ shall ” the Amendment  
of section 28,  
Act XXX of  
1934.  
following shall be inserted, namely :—

IV of 1871. “ unless section 8 of the Coroners Act, 1871, is applicable to the circumstances ” ;

(b) in sub-section (3), for the words “ this section ” the word, brackets and figure “ sub-section (2) ” shall be substituted ;

(c) in sub-section (4), after the words “ in pursuance of this section ” the words, brackets and figure “ and of any inquiry held by a coroner in a case to which sub-section (1) refers ” and after the words “ the Central Government ” the words “ the Chief Inspector of Explosives in India ” shall be inserted.

Price anna 1 or 1½d.



# ACT No. XXVI of 1940.

[PASSED BY THE INDIAN LEGISLATURE]

(Received the assent of the Governor General on the  
10th April, 1940)

## An Act further to amend the Motor Vehicles Act, 1939.

WHEREAS it is expedient further to amend the Motor Vehicles Act, 1939, for the purpose hereinafter appearing ;

IV of 1939.

It is hereby enacted as follows :—

1. This Act may be called the Motor Vehicles Short title, (Amendment) Act, 1940.

2. In section 48 of the Motor Vehicles Act, 1939,— Amendment of section 48, Act IV of 1939.

IV of 1939.

(a) for clauses (a) and (b) the following clause shall be substituted, namely:—

“(a) limit the number of stage carriages or stage carriages of any specified type for which stage carriage permits may be granted in the region or in any specified area or on any specified route within the region ; ” ;

(b) clauses (c), (d) and (e) shall be re-lettered as clauses (b), (c) and (d), respectively ;

(c) in clause (d) as so re-lettered, after sub-clause (ii) the following sub-clause shall be inserted, namely :—

“(iia) that the stage carriage or stage carriages shall be used only on specified routes or in a specified area ; ”.

Price anna 1 or 1½d.

GIPD—L86LD—20-6-40—10,000.





# ACT No. XXVII OF 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the  
15th April, 1940.)

## An Act to make better financial provision for the Imperial Council of Agricultural Research.

WHEREAS it is expedient to make better financial provision for the carrying out by the Imperial Council of Agricultural Research of the objects for which it is established as set forth in the Memorandum of Association of that body, and for this purpose to impose on certain articles a cess by way of customs duty on export, the proceeds of which shall be paid to the said Council :

It is hereby enacted as follows :—

1. (1) This Act may be called the Agricultural <sup>Short title and</sup> Produce Cess Act, 1940. <sub>extent.</sub>

(2) It extends to the whole of British India.

2. In this Act, unless there is anything repugnant <sup>Definitions.</sup> in the subject or context,—

(a) “Collector” means a Customs-collector as defined in clause (c) of section 3 of the Sea Customs Act, 1878, or a Collector of land Customs as defined in clause (c) of section 2 of the Land Customs Act, 1924, as the case may be, and

VIII of 1878.

XIX of 1924.

(b) “Council” means the Imperial Council of Agricultural Research.

3. (1) A customs duty at the rate of one-half of one <sup>Imposition of</sup> per cent. *ad valorem* shall be levied on all articles in- <sub>cess.</sub> cluded in the Schedule which are exported from British India :

Provided

*Price anna 1 or 1½d.*

Provided that the said duty shall not be levied on articles proved to the satisfaction of the Collector not to have been produced in India.

(2) The Central Government may, by notification in the official Gazette, fix for the purposes of levying the said duty tariff values of any articles included in the Schedule, and may alter any tariff values for the time being in force.

Power to  
exclude  
articles from  
Schedule.

4. The Central Government may, after previous consultation with the Council, by notification in the official Gazette, direct that any article specified in the Schedule shall cease to be subject to the duty imposed by section 3, and thereupon, so long as the notification remains in force, that article shall be deemed not to be included in the Schedule.

Refund of, and  
exemption  
from, cess.

5. The Central Board of Revenue may make rules providing, on such conditions as may be specified in the rules, for—

(a) the refund of duty levied where articles are exported by land and subsequently imported into India, and

(b) the export by land, without payment of the duty, of articles which are subsequently to be imported into India.

Payment of  
cess to  
Council and  
expenditure  
of cess by  
Council.

6. (1) The proceeds of the duty levied under this Act reduced by the cost of collection as determined by the Central Government shall be paid to the Council.

(2) The amount so due shall be paid by the Central Government to the Council at intervals of not more than six months.

(3) The expenditure of the money so paid to the Council shall be subject to such limitations as may be imposed by rules made in this behalf by the Central Government.

Standing  
Finance  
Committee.

7. (1) The Council shall constitute a Standing Finance Committee, of which one member shall be chosen from among the representatives of the Central Legislature on the governing body of the Council, and one member shall be an officer appointed by the Central Government.

(2) Subject

(2) Subject to the provisions of sub-section (1), the constitution, functions and procedure of the Standing Finance Committee shall be regulated in such manner as the Council may with the previous approval of the Central Government determine.

8. The Council shall in accordance with the rules made in this behalf by the Central Government create and maintain a reserve fund.

9. (1) The Central Government may, after consultation with the Council, by notification in the official Gazette, make rules to carry out the purposes of this Act.

Power of  
Central  
Government  
to make rules

(2) In particular and without prejudice to the generality of the foregoing power, the Central Government may make rules regulating the expenditure of the money paid to the Council under section 6 and providing for the creation, maintenance and management of the reserve fund referred to in section 8.

(3) All rules made under this Act shall be laid before both Chambers of the Central Legislature as soon as may be after they are made.

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## THE SCHEDULE.

(See section 3.)

1. BONES.
2. BRISTLES.
3. BUTTER.
4. CEREALS, other than Rice and Wheat.
5. DRUGS.
6. FIBRE for brushes.
7. FISH.
8. FRUITS.
9. GHEE.
10. HIDES, raw.
11. MANURES.
12. OILCAKES.
13. PULSES.
14. SEEDS.

*Agricultural Produce Cess.* [ACT XXVII OF 1940.]

14. SEEDS.
15. SKINS, raw.
16. SPICES.
17. TOBACCO, unmanufactured.
18. VEGETABLES.
19. WHEAT.
20. WHEAT FLOUR.
21. WOOL, raw.

# ACT No. XXVIII OF 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on  
the 27th November, 1940.)*

## An Act further to amend the Indian Works of Defence Act, 1903.

VII of 1903. **W**HEREAS it is expedient further to amend the  
Indian Works of Defence Act, 1903, for the  
purpose hereinafter appearing;

It is hereby enacted as follows :—

1. This Act may be called the Indian Works of Short title.  
Defence (Amendment) Act, 1940.

2. In section 7 of the Indian Works of Defence Act, 1903,—  
Amendment  
of section 7,  
Act VII of  
1903.

(a) in sub-clause (i) of clause (b), for the words  
preceding the first proviso the following words  
shall be substituted, namely :—

“no building, wall, bank or other construction  
of permanent materials above the ground  
shall be maintained otherwise than with  
the written approval of the General Officer  
Commanding the District and on such condi-  
tions as he may prescribe, and no such build-  
ing, wall, bank or other construction shall  
be erected :” ;

(b) in the proviso to clause (c), after the word  
“prescribe” the following words shall be  
inserted, namely :—

“a building or other construction on the surface  
may be maintained and”.

*Price anna 1 or 1½d.*



# ACT No. XXIX OF 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on  
the 27th November, 1940.)*

**An Act further to amend the Indian Navy  
(Discipline) Act, 1934, for certain purposes.**

XXXIV of  
1934.

**W**HEREAS it is expedient further to amend the Indian Navy (Discipline) Act, 1934, for the purposes hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Indian Navy (Discipline) Amendment Act, 1940. Short title.

XXXIV of  
1934.

2. In the Naval Discipline Act as set out in the First Schedule to the Indian Navy (Discipline) Act, 1934,— Amendment of First Schedule to Act XXXIV of 1934.

(a) to the first paragraph of section 45 the following shall be added, namely :—

“ or, except in the case of an offence punishable under the said section 302 or 377, with such other punishment as is hereinafter mentioned ” ;

and

(b) in section 55, for the words “ corporal punishment shall be deemed equal in degree to imprisonment, and ” the following shall be substituted, namely :—

“ transportation shall be deemed equal in degree to penal servitude, and corporal punishment shall be deemed equal in degree to imprisonment and ”.

*Price anna 1 or 1½d.*





# ACT No. XXX OF 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on  
the 27th November, 1940.)*

## An Act further to amend the Indian Navy (Discipline) Act 1934.

XXXIV of  
1934.

WHEREAS it is expedient further to amend the Indian Navy (Discipline) Act, 1934, for the purpose hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Indian Navy (Discipline) Second Amendment Act, 1940. Short title.

XXXIV of  
1934.

2. In sub-section (1) of section 90C of the Naval Discipline Act as set forth in the First Schedule to the Indian Navy (Discipline) Act, 1934, after the words “ self-governing Dominion ”, wherever they occur, the words “ or Burma ” shall be inserted. Amendment of  
First Schedule,  
Act XXXIV  
of 1934.

*Price anna 1 or 1½d.*



# ACT No. XXXI OF 1940

[PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on the 27th November, 1940.)*

## An Act further to amend the Cantonments Act, 1924.

**W**HEREAS it is expedient further to amend the Cantonments Act, 1924, for the purposes hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Cantonments (Amend. Short title. ment) Act, 1940.

2. For clause (i) of sub-section (2) of section 27 of the Cantonments Act, 1924 (hereinafter referred to as the said Act), the following clause shall be substituted, namely :—

Amendment of section 27, Act II of 1924.

“ (i) is not either a British subject or a subject of an Indian State, or ”.

3. In section 32 of the said Act, after the words “ meeting of the Board ” the words “ or of any committee of the Board ” shall be inserted.

Amendment of section 32, Act II of 1924.

4. In section 34 of the said Act,—

(a) in clause (a) of sub-section (1), for the words brackets and figures “ or in sub-section (2) of section 28 ” the words and figures “ or in section 28 ” shall be substituted ;

Amendment of section 34, Act II of 1924.

(b) after sub-section (2) the following sub-section shall be inserted, namely :—

“ (2A) The Central Government may, on receipt of a report from the Officer Commanding the station, through the Officer Commanding-in-Chief, the Command, remove from a Board any military officer nominated a member of the Board who is, in the opinion of the Officer Commanding the station, unable to discharge his duties as member of the Board and has failed to resign his office.”

*Price anna 1 or 1½d.*

Amendment of section 35, Act II of 1924. 5. In sub-section (1) of section 35 of the said Act, after the word, brackets and figure "sub-section (1)" the words, brackets, figure and letter "or under sub-section (2A)" shall be inserted.

Amendment of section 186, Act II of 1924. 6. In clause (b) of section 186 of the said Act, for the words "in any specified area or areas" the words "in the cantonment or any part thereof" shall be substituted.

Amendment of section 188, Act II of 1924. 7. In section 188 of the said Act, for the word "building" the word "structure" shall be substituted.

Amendment of Schedule V, Act II of 1924. 8. In Schedule V to the said Act, the entry relating to section 137 shall be omitted.

# ACT No. XXXII of 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on  
the 27th November, 1940.)*

An Act to repeal certain enactments and to  
amend certain other enactments.

**W**HEREAS it is expedient that the enactments specified in the First Schedule, which are spent or have otherwise become unnecessary, or have ceased to be in force otherwise than by expressed specific repeal, should be expressly and specifically repealed ;

**AND WHEREAS** it is expedient that certain amendments should be made in the enactments specified in the Second Schedule ;

It is hereby enacted as follows :—

1. This Act may be called the Repealing and Amending Act, 1940. Short title.

2. The enactments specified in the First Schedule are hereby repealed to the extent mentioned in the fourth column thereof. Repeal of certain enactments.

3. The enactments specified in the Second Schedule are hereby amended to the extent and in the manner mentioned in the fourth column thereof. Amendment of certain enactments.

4. The repeal by this Act of any enactment shall not affect any Act or Regulation in which such enactment has been applied, incorporated or referred to ; Savings.

and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand or any indemnity already granted, or the proof of any past act or thing ;

nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed, recognised or derived by, in or from any enactment hereby repealed ;

nor shall the repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

*Price anna 1 or 1½d.*

## THE FIRST SCHEDULE.

## REPEALS.

(See section 2.)

Year.	No.	Short title.	Extent of repeal.
1	2	3	4
<i>Acts of the Governor General in Council.</i>			
1836	XX .	The Batwaras Act, 1836 .	The whole in any areas where not already specifically repealed.
1837	XXVII .	The Bombay Salt Works Act, 1837.	The whole in any areas where not already specifically repealed.
1838	XI .	The Bengal Ameens Act, 1838 .	The whole in any areas where not already specifically repealed.
1838	XVIII .	The Bombay Sureties Act, 1838	The whole.
1848	XVIII .	The Nawab of Surat Act, 1848	The whole in any areas where not already specifically repealed.
1858	XXXVII .	The Nawab of Carnatic Act, 1858.	The whole.
1859	XIV .	The Summary Dispossession Act, 1859.	The whole in any areas where not already specifically repealed.
1868	XIII .	The King of Oudh's Act, 1868 .	The whole.
1873	XVII .	The Nawab Nazim's Debts Act, 1873.	The whole.
1895	XX .	<i>Ex-King</i> Thebaw's Act, 1895 .	The whole.

*Acts of the Indian Legislature.*

1931	I .	The Punjab Criminal Procedure Amendment (Supplementary) Act, 1931.	The whole.
1931	XIV. .	The Salt (Additional Import Duty) Act, 1931.	The whole.
1933	XXIV .	The Indian Tea Control Act, 1933.	The whole.
1933	XVII .	The Indian Wireless Telegraphy Act, 1933.	Section 9, and in section 10 (2) the word "and" at the end of clause (v) and the whole of clause (vi).
1936	II .	The Salt Additional Import Duty (Extending) Act, 1936.	The whole.

Year.	No.	Short title.	Extent of repeal.
1	2	3	4

*Acts of the Indian Legislature—contd.*

1936	VI . .	The Cochin Port Act, 1936 .	The whole.
1936	VII . .	The Indian Aircraft (Amendment) Act, 1936.	The whole.
1936	VIII . .	The Factories (Amendment) Act, 1936.	The whole.
1936	IX . .	The Indian Lac Cess (Amendment) Act, 1936.	The whole.
1936	X . .	The Indian Tariff (Amendment) Act, 1936.	The whole.
1936	XI . .	The Indian Mines (Amendment) Act, 1936.	The whole.
1936	XII . .	The Indian Tariff (Second Amendment) Act, 1936.	The whole.
1936	XIII . .	The Indian Tea Cess (Amendment) Act, 1936.	The whole.
1936	XV . .	The Indian Rubber Control (Amendment) Act, 1936.	The whole.
1936	XVII . .	The Indian Tea Control (Amendment) Act, 1936.	The whole.
1936	XIX . .	The General Clauses (Amendment) Act, 1936.	The whole.
1936	XX . .	The Chittagong Port (Amendment) Act, 1936.	The whole.
1936	XXI . .	The Code of Civil Procedure (Amendment) Act, 1936.	The whole.
1936	XXIV . .	The Cantonments (Amendment) Act, 1936.	The whole.

*Act of the Governor General.*

1936	..	The Indian Finance Act, 1936 .	In the long title and preamble, the words and figures "to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to fix maximum rates of postage under the Indian Post Office Act, 1898, and "  Sections 2 and 3 and Schedule I.
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Year.	No.	Short title.	Extent of repeal.
1	2	3	4
<i>Act of the Governor of Bombay in Council.</i>			
1867	VI . . .	The Bombay City Sanitary Regulation Act, 1867.	So much of the Act as relates to any matter included in the Federal Legislative List.

*Regulations made by the Governor General in Council.*

1936	VIII . . .	The Andaman and Nicobar Islands Land-tenure (Amendment) Regulation, 1936.	The whole.
1936	IX . . .	The Sind Laws (Amendment) Regulation, 1936.	The whole.
1936	X . . .	The Sind Laws (Second Amendment) Regulation, 1936.	The whole.
1936	XI . . .	The Orissa Laws (Amendment) Regulation, 1936.	The whole.
1936	XV . . .	The British Baluchistan Laws (Amendment) Regulation, 1936.	The whole.

**THE SECOND SCHEDULE.**

**AMENDMENTS.**

(See section 3.)

Year.	No.	Short title.	Amendments.
1	2	3	4
<i>Acts of the Governor General in Council.</i>			
1897	X . . .	The General Clauses Act, 1897	For clause (27b) of section 3 the following clause shall be substituted, namely :— “(27b) ‘Indian State’ shall mean any territory, not being part of British India, which His Majesty recognises as being such a State whether described as a State, an Estate, a Jagir or otherwise;”.
1908	XVI . . .	Indian Registration Act, 1908.	In section 29 (1), for the words and figures “other than a document referred to in section 28, and a copy of a decree or order” the words and figures “not being a document referred to in section 28 or a copy of a decree or order” shall be substituted.

Year.	No.	Short title	Amendments.
1	2	3	4

*Acts of the Governor General in Council—contd.*

1910	IX .	The Indian Electricity Act, 1910.	In section 52 the word "Indian" shall be omitted.
1913	III .	The Administrator General's Act, 1913.	In section 33, for the word "presidency" the word "division" shall be substituted.
1913	VII .	The Indian Companies Act, 1913.	In sub-sections (1) and (3) of section 152 the word "Indian" shall be omitted. In sub-section (6) of section 208C, for the words and figures "Indian Arbitration Act, 1899" the words and figures "Arbitration Act, 1940" shall be substituted.

*Acts of the Indian Legislature.*

1922	VIII .	The Delhi University Act, 1922	In sub-section (2) of section 46, for the figures "1897" the figures "1925" shall be substituted.
1923	VI .	The Cantonments (House-Accommodation) Act, 1923.	In sub-section (3) of section 36, for the word "Authority" the word "Board" shall be substituted.
1923	XIV .	The Indian Cotton Cess Act, 1923.	In clause (1a) of section 4 the words "in agricultural matters" shall be omitted.
1924	II .	The Cantonments Act, 1924	In sub-section (5) of section 73, for the words "every transfer on devolution" the words "every transfer or devolution" shall be substituted.  In clause (a) of sub-section (2) of section 254, for the words "on any one of them" the words "to any one of them" shall be substituted.
1937	VI .	The Arbitration (Protocol and Convention) Act, 1937.	In section 3, for the words and figures "Indian Arbitration Act, 1899" the words and figures "Arbitration Act, 1940" shall be substituted.

*Acts of the Central Legislature.*

1937	XVIII .	The Hindu Women's Rights to Property Act, 1937.	In sub-section (2) of section 1, the words "including British Baluchistan and the Sonthal Parganas but excluding Burma" shall be omitted.
1937	XIX .	The Arya Marriage Validation Act, 1937.	In sub-section (2) of section 1, the words "including British Baluchistan and the Sonthal Parganas" shall be omitted.

Year. 1	No. 2	Short title. 3	Amendments. 4								
<i>Regulation made by the Governor General in Council.</i>											
1913	II	The British Baluchistan Laws Regulation, 1913.	<p>In Schedule I, for the item—</p> <table> <tr> <td>"1934</td><td>xxxiv</td><td>The Indian Tariff Act, 1932.</td><td>Section 5 only."</td></tr> </table> <p>the following item shall be substituted, namely :—</p> <table> <tr> <td>"1934</td><td>xxxii</td><td>The Indian Tariff Act, 1934.</td><td>Section 5 only."</td></tr> </table>	"1934	xxxiv	The Indian Tariff Act, 1932.	Section 5 only."	"1934	xxxii	The Indian Tariff Act, 1934.	Section 5 only."
"1934	xxxiv	The Indian Tariff Act, 1932.	Section 5 only."								
"1934	xxxii	The Indian Tariff Act, 1934.	Section 5 only."								
<i>Regulation made by the Governor General.</i>											
1939	VI	The British Baluchistan Criminal and Civil Justice and Laws Extension Regulation, 1939.	<p>In clause (c) of section 3, for the item—</p> <table> <tr> <td>"1934</td><td>xxxiv</td><td>The Indian Tariff Act, 1932.</td><td>Section 5 only."</td></tr> </table> <p>the following item shall be substituted, namely :—</p> <table> <tr> <td>"1934</td><td>xxxii</td><td>The Indian Tariff Act, 1934.</td><td>Section 5 only."</td></tr> </table>	"1934	xxxiv	The Indian Tariff Act, 1932.	Section 5 only."	"1934	xxxii	The Indian Tariff Act, 1934.	Section 5 only."
"1934	xxxiv	The Indian Tariff Act, 1932.	Section 5 only."								
"1934	xxxii	The Indian Tariff Act, 1934.	Section 5 only."								

# ACT No XXXIII of 1940

[PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on  
the 27th November, 1940.)*

**An Act further to amend the Indian Registration Act, 1908, for certain purposes.**

XVI of 1908.

**W**HEREAS it is expedient further to amend the Indian Registration Act, 1908, for the purposes hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Indian Registration (Amendment) Act, 1940. Short title.

XVI of 1908.

2. In section 18 of the Indian Registration Act, 1908 (hereinafter referred to as the said Act), after clause (c) the following clause shall be inserted, namely :—

Amendment of  
section 18,  
Act XVI of  
1908.

“(cc) instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property ;”.

3. In section 28 of the said Act,—

(a) for the word, brackets and letter “ and (d) ” the words, brackets, letters and figures “ , (d) and (e), section 17, sub-section (2), in so far as such document affects immoveable property , ” shall be substituted ; and

Amendment of  
section 28,  
Act XVI of  
1908.

(b) for the word, brackets and letter “ and (c) ” the word, brackets and letters “ , (c) and (cc) ” shall be substituted.

*Price anna 1 or 1½d.*



# ACT No. XXXIV OF 1940

[PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on the 27th November, 1940.)*

## An Act further to amend the Code of Civil Procedure, 1908.

v of 1908. **W**HEREAS it is expedient further to amend the Code of Civil Procedure, 1908, for the purposes hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Code of Civil Procedure Short title.  
(Amendment) Act, 1940.

v of 1908. 2. (1) In section 29 of the Code of Civil Procedure, 1908 (hereinafter referred to as the said Code),— Amendment of section 29, Act V of 1908.

(a) in the paragraph preceding the proviso—

- (i) after the word “ Summonses ” the words “ and other processes ” shall be inserted ;
- (ii) for the words “ had been ” the words “ were summonses ” shall be substituted ; and

(b) in the proviso—

- (i) after the word “ summonses ” the words “ or processes ” shall be inserted ;
- (ii) for the words “ by whose Courts a summons is ” the words “ of the Province in which such summonses or processes are ” shall be substituted ;
- (iii) for the words “ Courts of the Province ” the words “ such Courts ” shall be substituted.

(2) The substitution made in the said Code by sub-clause (iii) of clause (b) of sub-section (1) and the substitution so made by sub-clause (ii) of the said clause with the omission of the words “ or processes ” shall be deemed to have taken effect on the 1st day of April, 1937.

3. In clause (b) of sub-section (2) of section 48 of the said Code, for the figures and words “ 180 of the Amendment of section 48, Act V of 1908. Second Schedule to the Indian Limitation Act, 1877 ” the figures and words “ 183 of the First Schedule to the Indian Limitation Act, 1908 ” shall be substituted.

*Price anna 1 or 1½d.*



# ACT No. XXXV of 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on  
the 27th November, 1940.)*

## An Act further to amend the Code of Criminal Procedure, 1898.

V of 1898. **W**HEREAS it is expedient further to amend the Code of Criminal Procedure, 1898, for the purpose hereinafter appearing ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Code of Criminal Procedure (Amendment) Act, 1940. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

V of 1898. 2. After sub-section (2) of section 503 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the said Act), the following sub-section shall be inserted, namely :— Amendment of section 503, Act V of 1898.

“(2A) When the witness resides in British Burma, the commission may be issued to any District Magistrate or Magistrate of the first class within the local limits of whose jurisdiction in British Burma such witness resides.”

3. After section 508 of the said Act the following section shall be inserted, namely :— Insertion of new section 508A in Act V of 1898.

“508A. The provisions of sub-section (3) of section 503, sub-sections (1) and (1A) of section 504 and so much of sections 505 and 507 as relates to the execution of a commission and its return by the Magistrate or officer to whom the commission is directed shall apply in respect of commissions issued by a Magistrate or Court in British Burma under the law in force in British Burma relating to commissions for the examination of witnesses, as they apply to commissions issued under section 503 or section 506.” Application of this Chapter to commissions issued in British Burma.

*Price anna 1 or 1½d.*





# ACT No. XXXVI OF 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on  
the 27th November, 1940.)

An Act further to amend the Indian Companies Act, 1913.

VII of 1913.

**W**HEREAS it is expedient further to amend the Indian Companies Act, 1913, for the purpose hereinafter appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Companies (Amendment) Act, 1940. Short title and commencement

(2) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

VII of 1913.

2. After section 244A of the Indian Companies Act, 1913, the following section shall be inserted, namely:— Insertion of new section 244B in Act VII of 1913.

“244B. (1) Where any company is being wound up, if the liquidator has in his hands or under his control any money of the company representing unclaimed dividends payable to any creditor or undistributed assets refundable to any contributory which have remained unclaimed or undistributed for six months after the date on which they became payable or refundable, the liquidator shall forthwith pay the said money into the Reserve Bank of India to the credit of the Central Government in an account to be called the Companies Liquidation Account, and the liquidator shall, on the dissolution of the company, similarly pay into the said account any money representing unclaimed dividends or undistributed assets in his hands at the date of dissolution. Unclaimed dividends and undistributed assets to be paid to Companies Liquidation Account.

(2) The liquidator shall, when making any payment referred to in sub-section (1), furnish to such officer as the Central Government may appoint in this behalf a statement in the prescribed form setting forth in respect of all sums included in such payment the nature of the sums, the names and last known addresses of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto, and such other particulars as may be prescribed.

Price anna 1 or 1½d.

(3) The receipt of the Reserve Bank of India for any money paid to it under sub-section (1) shall be an effectual discharge of the liquidator in respect thereof.

(4) Where the company is being wound up by the Court, the liquidator shall make the payments referred to in sub-section (1) by transfer from the special banking account referred to in sub-section (3) of section 244A, and where the company is wound up voluntarily, or subject to the supervision of the Court, the liquidator shall, when filing a statement in pursuance of sub-section (1) of section 244, indicate the sum of money which is payable to the Reserve Bank of India under sub-section (1) which he has had in his hands or under his control during the six months preceding the date to which the said statement is brought down, and shall, within fourteen days of the date of filing the said statement, pay that sum into the Companies Liquidation Account.

(5) Any person claiming to be entitled to any money paid into the Companies Liquidation Account in pursuance of this section may apply to the Court for an order for payment thereof, and the Court, if satisfied that the person claiming is entitled, may make an order for the payment to that person of the sum due :

Provided that before making such order the Court shall cause a notice to be served on such officer as the Central Government may appoint in this behalf calling on the officer to show cause within one month from the date of the service of the notice why the order should not be made.

(6) Any money paid into the Companies Liquidation Account in pursuance of this section, which remains unclaimed thereafter for a period of fifteen years, shall be transferred to the general revenue account of the Central Government; but any claim preferred under sub-section (5) to any money so transferred shall be allowable as if such transfer had not been made, the order for payment on such claim being treated as an order for refund of revenue.

(7) Any liquidator retaining any money which should have been paid by him into the Companies Liquidation Account under this section shall pay interest on the amount retained at the rate of twenty per cent. per annum and shall also be liable to pay any expenses occasioned by reason of his default, and, where the winding up is by or under the supervision of the Court, he shall also be liable to disallowance of all or such part of his remuneration as the Court may think just and to be removed from his office by the Court.

(8) Nothing in this section shall apply in relation to companies with objects confined to a single Province which are not trading corporations."

# ACT No. XXXVII of 1940

[PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on the 27th November, 1940.)*

**An Act to enable companies in British India to make donations to public funds formed, and to make investments in Government loans floated, for the purpose of assisting the prosecution of the present war.**

**W**HEREAS it is expedient to enable companies in British India to make donations to public funds formed, and to make investments in Government loans floated, for the purpose of assisting the prosecution of the present war ;

**AND WHEREAS** it is also expedient to remove doubts as to the legality of such donations and investments where already made ;

It is hereby enacted as follows :—

**1.** This Act may be called the War Donations and Investments (Companies) Act, 1940. Short title.

**2.** In this Act “Government loan” includes a loan floated by the Government of the United Kingdom. Interpretation.

VII of 1913.

VI of 1882.

X of 1866.

VII of 1913.

**3.** Any company formed and registered under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act or Acts repealed thereby may, notwithstanding anything contained in the Indian Companies Act, 1913, and notwithstanding that the memorandum of association or the articles of association of the company do not enable it so to do, by special resolution authorise the making of a donation from the company's assets to a public fund formed, or the making of an investment of the company's assets in a Government loan floated, for the purpose of assisting the prosecution of the present war. Power of companies to make donations and investments.

**4.** Any donation to a public fund formed, and any investment in a Government loan floated, for the purpose of assisting the prosecution of the present war Validation of donations and investments already made.

*Price anna 1 or 1½d.*

made by any company to which this Act applies between the 3rd day of September, 1939, and the commencement of this Act shall be as valid in all respects as if it had been made in accordance with the provisions of section 3, and after the commencement of this Act.

Decision of  
doubts.

5. If any question arises whether for the purposes of this Act a loan is a Government loan floated for the purpose of assisting the prosecution of the present war or whether a fund is a public fund formed for the purpose of assisting the prosecution of the present war, the question shall be decided by the Central Government whose decision shall be final.

# ACT No. XXXVIII OF 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on  
the 27th November, 1940.)*

## An Act further to amend the Reserve Bank of India Act, 1934.

II of 1934.

**W**HEREAS it is expedient further to amend the Reserve Bank of India Act, 1934, for the purpose hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Reserve Bank of Short title.  
India (Third Amendment) Act, 1940.

II of 1934.

2. After sub-section (3) of section 42 of the Reserve Bank of India Act, 1934, the following sub-section shall be inserted, namely :—

Amendment of  
Section 42, Act  
II of 1934.

‘(3A) When under the provisions of sub-section (3) penal interest at the increased rate of five per cent. above the bank rate has become payable by a scheduled bank, if thereafter on the day fixed for the next return the balance held at the Bank is still below the prescribed minimum as disclosed by this return,—

(a) every director and any managing agent, manager or secretary of the scheduled bank, who is knowingly and wilfully a party to the default, shall be punishable with fine which may extend to five hundred rupees and with a further fine which may extend to five hundred rupees for each subsequent day on which the default continues, and

(b) the Bank may prohibit the scheduled bank from receiving after the said day any fresh deposit,

and, if default is made by the scheduled bank in complying with the prohibition referred to in clause (b), every director and officer of the scheduled bank who is knowingly and wilfully a party to such default or who through negligence or otherwise contributes to such default shall

*Price anna 1 or 1½d.*

in respect of each such default be punishable with fine which may extend to five hundred rupees and with a further fine which may extend to five hundred rupees for each day after the first on which a deposit received in contravention of such prohibition is retained by the scheduled bank.

*Explanation.*—In this sub-section “ officer ” includes a managing agent, manager, secretary, branch manager, and branch secretary.’

# ACT No. XXXIX OF 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on  
the 27th November, 1940.)

## An Act further to amend the Motor Spirit (Duties) Act, 1917.

II of 1917.

**W**HEREAS it is expedient further to amend the Motor Spirit (Duties) Act, 1917, for the purpose hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Motor Spirit (Duties) <sup>Short title.</sup> Amendment Act, 1940.

II of 1917.

2. In section 2 of the Motor Spirit (Duties) Act, 1917, <sup>Amendment of</sup> for the definition of motor spirit the following shall be <sup>section 2, Act</sup> substituted, namely :— <sup>II of 1917.</sup>

“ Motor spirit ” means—

- (a) any inflammable hydrocarbon (including any mixture of hydrocarbons or any liquid containing hydrocarbons) which is capable of being used for providing reasonably efficient motive power for any form of motor vehicle, and
- (b) power alcohol, that is ethyl alcohol of any grade (including such alcohol when denatured or otherwise treated) which, either by itself or in admixture with any such hydrocarbon, is capable of being used as aforesaid.’

*Price anna 1 or 1½d.*





# ACT No. XL of 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the  
3rd December, 1940.)

An Act further to amend the Indian Income-tax Act, 1922, and to make certain transitory provisions with respect to the operation of that Act on the coming into force of Part II of the Indian Income-tax (Amendment) Act, 1939.

XI of 1922. **W**HEREAS it is expedient further to amend the Indian Income-tax Act, 1922, for the purposes hereinafter appearing, and to make certain transitory provisions with respect to the operation of that Act on the coming into force of Part II of the Indian Income-tax (Amendment) Act, 1939 ;

VII of 1939.

It is hereby enacted as follows :—

1. This Act may be called the Indian Income-tax <sup>Short title.</sup> (Amendment) Act, 1940.

XI of 1922. 2. For clause (6) of section 2 of the Indian Income-tax Act, 1922 (hereinafter referred to as the said Act), <sup>Amendment of section 2, Act XI of 1922.</sup> the following clause shall be substituted, namely :—

VII of 1913. ‘ (6) “ company ” means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession or of a law of an Indian State, and includes any foreign association, whether incorporated or not, which the Central Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act ;’

3. (1) In section 5 of the said Act,—

<sup>Amendment of section 5, Act XI of 1922.</sup>

(a) in sub-section (3), the words “ for any area ” shall be omitted ;

(b) in sub-sections (4) and (5), for the words “ and of such incomes or classes of income and ” the words “ or of such incomes or classes of income or ” shall be substituted ;

(c) in  
I

(c) in sub-section (4), for the words “ and, where two or more Appellate Assistant Commissioners have been appointed for the same area ” the following words shall be substituted, namely :—

“ and, where such directions have assigned to two or more Appellate Assistant Commissioners of Income-tax, the same persons or classes of persons or the same incomes or classes of income or the same area ”;

(d) in sub-section (5), for the words “ and, where two or more Inspecting Assistant Commissioners of Income-tax or Income-tax Officers have been appointed for the same area ” the following words shall be substituted, namely :—

“ and, where such directions have assigned to two or more Inspecting Assistant Commissioners of Income-tax or Income-tax Officers, the same persons or classes of persons or the same incomes or classes of income or the same area ”;

(e) in sub-section (6), for the words “ and for such area ” the words “ or such area ” shall be substituted, the words “ within the specified area ” shall be omitted, and after the words “ specified classes of persons or classes of income ” the words “ or area ” shall be inserted ;

(f) after sub-section (7) the following sub-section shall be inserted, namely :—

“ (7A) The Commissioner of Income-tax may transfer any case from one Income-tax Officer subordinate to him to another, and the Central Board of Revenue may transfer any case from any one Income-tax Officer to another. Such transfer may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Income-tax Officer from whom the case is transferred.”

(2) The amendments made by clauses (a), (b), (c), (d) and (e) of sub-section (1) shall be deemed to have taken effect on the 1st day of April, 1939.

4. After section 5 of the said Act the following headings shall be inserted, namely :—

#### “ CHAPTER II-A.

##### APPELLATE TRIBUNAL . ”

and in sub-section (8) of section 5A for the word “ place ” the word “ places ” shall be substituted.

5. In

Insertion of headings after section 5, and amendment of section 5A of Act XI of 1922.

5. In sub-section (1) of section 9 of the said Act, in clause (vii), for the words "the net annual value after deducting the foregoing allowances", in both places where they occur, the words "the annual value" shall be substituted.

Amendment of  
section 9, Act  
XI of 1922.

6. To sub-section (3A) of section 18 of the said Act the following provisos shall be added, namely:—

Amendment of  
section 18, Act  
XI of 1922.

"Provided that where the person so payable is a British subject as defined in section 27 of the British Nationality and Status of Aliens Act, 1914, or a subject of a State in India or Burma, and the Income-tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the total world income of such person will be less than the minimum liable to income-tax or that his total income will be liable to a rate of income-tax less than the maximum rate, the person responsible for paying any income referred to in this sub-section shall, until such certificate is cancelled by the Income-tax Officer, pay the income without deduction or deduct the tax at such less rate, as the case may be :

Provided further that nothing in this sub-section shall apply to any payment made in the course of transactions in respect of which the person responsible for making the payment is deemed under the first proviso to section 43 not to be an agent of the payee."

7. In sub-section (1) of section 23A of the said Act,—
- (a) after the words "in general meeting" the words "increased by any income-tax payable thereon" shall be omitted ;
- (b) after the words "the assessable income of the company of that previous year" the words "as reduced by the amount of income-tax and super-tax payable by the company in respect thereof" shall be inserted ;
- (c) after the words "as computed for income-tax purposes" the words "and reduced by the amount of income-tax and super-tax payable by the company in respect thereof" shall be inserted ;
- (d) in the first proviso, the words "of the assessable income", in both places where they occur, shall be omitted ;
- (e) in the second proviso, the words "as reduced by the amount of income-tax and super-tax payable by the company in respect thereof"

Amendment of  
section 23A,  
Act XI of  
1922.

thereof" shall be inserted after the words "fifty-five per cent. of the assessable income of the company" and shall also be added at the end of the proviso.

Amendment of  
section 28, Act  
XI of 1922.

8. In the proviso to sub-section (1) of section 28 of the said Act, after clause (c) the following clause shall be added, namely :—

"(d) when the person liable to penalty is a registered firm, or an unregistered firm treated under section 23 (5) (b) as a registered firm, so that the amount of the income-tax and super-tax payable by the firm itself has not been determined, that amount shall be taken to be an amount equal to the tax which would have been payable by an unregistered firm on an income equal to the firm's total income, and, in the cases referred to in clauses (b) and (c), the amount of the income-tax and super-tax which would have been avoided if the income as returned had been accepted as the correct income, shall be taken to be the difference between the amount of the tax which would have been payable by an unregistered firm on an income equal to the firm's total income and the amount of the tax payable by an unregistered firm on an income equal to the income of the firm as actually returned by the firm."

Amendment of  
section 58B,  
Act XI of  
1922.

9. After sub-section (3) of section 58B of the said Act the following sub-section shall be inserted, namely :—

"(3A) An order according recognition to a provident fund shall not, unless the Commissioner otherwise directs, be affected by the fact that the fund is subsequently amalgamated with another provident fund on the occurrence of an amalgamation of the undertakings in connection with which the two funds are maintained, or that it subsequently absorbs the whole or a part of another provident fund belonging to an undertaking which is wholly or in part transferred to or merged in the undertaking of the employer maintaining the first mentioned fund."

Amendment of  
section 58C,  
Act XI of  
1922.

10. (1) In sub-section (1) of section 58C of the said Act,—

(a) to clause (a) the following proviso shall be added, namely :—

"Provided that the Commissioner may, if he thinks fit and subject to such conditions,  
if any,

if any, as he thinks proper to attach to the recognition, accord recognition to a fund maintained by an employer whose principal place of business is not in British India notwithstanding that a proportion not exceeding ten per cent. of the employees is employed outside India.”;

(b) to clause (b) the following proviso shall be added, namely :—

“ Provided that an employee who retains his employment while serving in His Majesty’s Forces or when taken into or employed in the national service under the National Service (European British Subjects) Act, 1940, or the National Service (Technical Personnel) Ordinance, 1940, may, notwithstanding that he receives from the employer no salary or a salary less than he would have received had he not entered His Majesty’s Forces, or been so taken into or employed in the national service, contribute to the fund during his service in His Majesty’s Forces or while so taken into or employed in the national service a sum not exceeding the amount he would have contributed had he continued to receive from the employer the same salary (including increments, if any) as he would have received had he not entered His Majesty’s Forces or been taken into or employed in the national service.” ;

(c) in clause (d), after the words “ contributions as above specified ” the words “ and of donations, if any, received from the trustees ” shall be inserted, and for the words “ contributions and accumulations ” the words “ contributions, donations and accumulations ” shall be substituted.

(2) The amendment made by clause (b) of sub-section (1) shall be deemed to have been made and to have taken effect on the 3rd day of September, 1939.

11. In sub-section (1) of section 61 of the said Act, after the word “ before ” the words “ the Appellate Tribunal or ” shall be inserted. Amendment of section 61, Act XI of 1922.

12. In clause (b) of sub-section (5) of section 64 of the said Act, after the words “ where by ” the words “ any direction given or ” shall be inserted, and after the word and figure “ section 5 ” the words, brackets, Amendment of section 64, Act XI of 1922.

figures

figures and letter " or in consequence of any transfer made by him under sub-section (7A) of section 5 " shall be inserted.

Amendment of  
the Schedule,  
Act XI of  
1922.

**13.** In the Schedule to the said Act, in rule 9, for the words " by a mutual insurance company " the words " by a mutual insurance association " shall be substituted.

Transitory pro-  
visions with  
respect to  
operation of  
Act XI of  
1922.

**14.** Notwithstanding the coming into force of Part II of the Indian Income-Tax (Amendment) Act, 1939,— VII of 1939.

- (a) all appeals already instituted under section 32 of the Indian Income-tax Act, 1922, at the time when the said Part II comes into force,
- (b) all proceedings then pending before the Commissioner in connection with the exercise of his powers of revision under section 33,
- (c) all applications to the Commissioner, then pending, for reference to the High Court under sub-section (2) of section 66, and
- (d) all applications to the High Court, then pending, for the issue of a requisition to the Commissioner under sub-section (3) of section 66,

may be continued and disposed of as if the said Part II had not come into force, and the provisions of sub-sections (2), (3), (3A), (4), (5) and (6) of section 66, as subsisting before the said Part II came into force, shall continue to have effect in relation to the appeals and proceedings referred to in clauses (a) and (b):

Provided that where under the provisions of section 33 of the Indian Income-tax Act, 1922, as substituted by the Indian Income-tax (Amendment) Act, 1939, an assessee becomes entitled to appeal to the Appellate Tribunal against any order passed by an Appellate Assistant Commissioner under section 28 or section 31 in respect of which he has already lodged an appeal to the Commissioner under section 32 or made any application to the Commissioner for the exercise of his powers of revision under section 33, he may at his option elect to proceed with his appeal to the Commissioner or his application, as the case may be, in which case he shall lose his right of appeal to the Appellate Tribunal, or he may elect to appeal to the Appellate Tribunal under section 33, in which case his appeal to the Commissioner or his application, as the case may be, shall lapse. VII of 1939.

# ACT No. XLI of 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the  
3rd December, 1940.)

An Act to amend the Indian Sale of Goods Act, 1930.

III of 1930.

WHEREAS it is expedient to amend the Indian Sale of Goods Act, 1930, for the purposes hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Indian Sale of Goods Short title.  
(Amendment) Act, 1940.

III of 1930.

2. After section 64 of the Indian Sale of Goods Act, 1930, the following section shall be inserted, namely :—

Insertion of  
new section  
64A in Act III  
of 1930.

“64A. In the event of any duty of customs or excise on any goods being imposed, increased, decreased or remitted after the making of any contract for the sale of such goods without stipulation as to the payment of duty where duty was not chargeable at the time of the making of the contract, or for the sale of such goods duty-paid where duty was chargeable at that time,—

In contracts  
of sale  
amount  
of increased  
or decreased  
duty to be  
added or  
deducted.

(a) if such imposition or increase so takes effect that the duty or increased duty, as the case may be, or any part thereof, is paid, the seller may add so much to the contract price as will be equivalent to the amount paid in respect of such duty or increase of duty, and he shall be entitled to be paid and to sue for and recover such addition, and

(b) if such decrease or remission so takes effect that the decreased duty only or no duty, as the case may be, is paid, the buyer may deduct so much from the contract price as will be equivalent to the decrease of duty or remitted duty, and he shall not be liable to pay, or be sued for or in respect of, such deduction.”

3. (1) Section

1

Price anna 1 or 1½d.



*Indian Sale of Goods*      [ACT XLI OF 1940.]  
(*Amendment*).

Repeal of  
section 10 of  
Act XXXII  
of 1934.

3. (1) Section 10 of the Indian Tariff Act, 1934, is ~~XXXII~~ of 1934. hereby repealed.

(2) Nothing in the repeal effected by sub-section (1) shall affect or be deemed to affect—

- (a) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or
- (b) any legal proceedings or remedy in respect of any such right, title, interest, obligation or liability, or
- (c) anything done or suffered before the commencement of this Act.

# ACT No. XLII of 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

*(Received the assent of the Governor General on the  
3rd December, 1940.)*

An Act to amend the Excess Profits Tax Act, 1940.

XV of 1940.

**W**HEREAS it is expedient to amend the Excess Profits Tax Act, 1940, for the purposes herein-after appearing ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Excess Profits Tax (Amendment) Act, 1940. Short title, commencement and effect.

(2) It shall come into force at once ; but its provisions shall be deemed to have taken effect on the day on which the Excess Profits Tax Act, 1940, came into force.

XV of 1940.

2. In clause (2I) of section 2 of the Excess Profits Tax Act, 1940 (hereinafter referred to as the said Act), for sub-clause (b) the following sub-clauses shall be substituted, namely :— Amendment of section 2, Act XV of 1940.

“(b) in relation to a business carried on by a partnership of which one or more of the partners is a body corporate (other than a company the directors whereof have a controlling interest therein), such a rate per cent. as is equivalent to—

(i) eight per cent. per annum on so much of the average amount of the capital employed in the business during the chargeable accounting period as represents the share of any such body corporate, and

(ii) ten per cent. per annum on the remainder of that amount ;

(c) in relation to a business to which neither sub-clause (a) nor sub-clause (b) applies, ten per cent. per annum :”.

3. In sub-section (3) of section 6 of the said Act, Amendment of section 6, Act XV of 1940 after the word and figure “section 13” the following words shall be inserted, namely :—

“or within the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section”

and to

and to the sub-section the following proviso shall be added, namely :—

“ Provided further that a determination on an application under this sub-section—

- (a) shall have effect with respect to all subsequent chargeable accounting periods ;
- (b) shall exclude any further application under this sub-section.”

Amendment of  
section 8, Act  
XV of 1940.

4. In section 8 of the said Act,—

- (a) in sub-section (3), after the words “ in computing the capital employed in the business after the change ”, and in sub-section (4), after the words “ in computing the capital employed in the resulting business ” the following words shall be inserted, namely :—

“ and in considering, for the purposes of computing the profits of, and the capital employed during, any chargeable accounting period, whether any and, if so, what deductions are to be made in respect of depreciation of buildings, plant and machinery, ” ;

- (b) in sub-section (5), the words “ subject to any necessary modifications ” shall be omitted ;
- (c) in sub-section (6), the words “ subject, however, to such modifications (including modifications as respects the computation of capital) as he may consider just ” shall be omitted ;
- (d) after sub-section (7) the following sub-section shall be added, namely :—

“ (8) Where—

- (a) a business is, by virtue of sub-section (2) or sub-section (3), deemed not to have been discontinued ; or
- (b) a business is, by virtue of sub-section (4), to be treated as if it had been in existence throughout the period during which there was in existence any other business ; or
- (c) a business is, by virtue of sub-section (5), to be treated as a continuation of another business ; or
- (d) any person who is carrying on a business after a transfer is treated, by virtue of sub-section (6), as having carried on the business as from a date before the transfer,

the provisions of this Act relating to the computation of profits and capital for the purposes  
of excess

of excess profits tax shall, both as respects the standard period and any chargeable accounting period, have effect subject to such modifications, if any, as the Excess Profits Tax Officer may think just, and the Excess Profits Tax Officer may make such alterations in the periods which would otherwise be the chargeable accounting periods of the business as he thinks proper :

Provided that if the Excess Profits Tax Officer makes any such modifications and the person carrying on the business is dissatisfied with the modifications so made, or if the person carrying on the business is dissatisfied with the refusal of the Excess Profits Tax Officer to make any such modifications, he may, at any time before the expiry of forty-five days from the date on which the order of the Excess Profits Tax Officer is communicated to him, appeal to the Board of Referees through the Excess Profits Tax Officer."

5. After sub-section (1) of section 9 of the said Act the following sub-section shall be inserted, namely :— Amendment of section 9, Act XV of 1940.

" (1A) Where—

- (a) any debt is owing to any company by another company ; and
- (b) one of those companies is a subsidiary of the other, or both are subsidiaries of a third company ; and
- (c) no interest is payable in respect of the debt, but the circumstances in which the debt came into existence or is allowed to continue to exist are such that the debt represents in substance capital employed in the business of the debtor company,

the capital of both companies shall be computed as if the debt did not exist."

6. In sub-section (2) of section 12 of the said Act,— Amendment of section 12, Act XV of 1940.

- (a) for the words " to the extent that such profits arose in the said country " the words " to the extent to which such profits are liable to excess profits tax under this Act " shall be substituted ;
- (b) in the proviso, for the words " chargeable accounting period ", where those words occur for the

*Excess Profits Tax (Amendment).* [ACT XLII

for the second time, the following shall be substituted, namely :—

“ previous year (as determined for that business for the purposes of the Indian Income-tax Act, 1922) ”.

Amendment of  
section 17, Act  
XV of 1940.

7. For the second proviso to sub-section (1) of section 17 of the said Act the following shall be substituted, namely :—

“ Provided further that no appeal shall lie under this section against any apportionment made by the Excess Profits Tax Officer under the proviso to sub-section (5) of section 8, against any modifications made by the Excess Profits Tax Officer under sub-section (8) of section 8, against any decision of the Excess Profits Tax Officer under rule 11 of the First Schedule, or against any decision of the Board of Referees or the Central Board of Revenue.”

Amendment of  
section 26, Act  
XV of 1940.

8. In section 26 of the said Act, —

(a) in sub-section (1) and in sub-section (3), after the word “ If ” the following words shall be inserted, namely :—

“ on an application made to it through the Excess Profits Tax Officer ” ;

(b) to sub-section (1) the following proviso shall be added, namely :—

“ Provided further that a determination on an application under this sub-section—

(a) shall have effect with respect to all subsequent chargeable accounting periods ;

(b) shall exclude any further application under this sub-section.” ;

(c) after sub-section (3) the following sub-section shall be added, namely :—

“ (4) An application to the Central Board of Revenue under this section shall be presented to the Excess Profits Tax Officer before the expiry of the period specified in the notice issued under sub-section (1) of section 13 or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section, but in the case of an application under sub-section (1) of this section, if the person carrying on the business has made or is making an application under sub-section (3) of section 6 the application

application shall be presented to the Excess Profits Tax Officer before the expiry of forty-five days from the date on which the order of the Board of Referees disposing of the application under sub-section (3) of section 6 is communicated to the person who has made that application."

9. In Schedule I to the said Act,—

Amendment of  
Schedule I,  
Act XV of 1940.

- (a) in rule 1, in the first proviso, after the word "Provided" the word "further" shall be inserted, and before that proviso, as so amended, the following proviso shall be inserted, namely :—

"Provided that any sums excluded under the proviso to clause (iii) of sub-section (2) or clause (a) of sub-section (4) of that section from the allowances made in computing the profits of the business for the purposes of income-tax shall, if paid, be included in those allowances when computing the profits of the business for the purposes of excess profits tax : " ;

(b) in rule 4,—

- (i) in sub-rule (1) after the brackets and figure "(2)" the brackets, figure and letter "(2A)" shall be inserted ;

(ii) after sub-rule (2) the following sub-rule shall be inserted, namely :—

"(2A) In the case of a business part of which consists in banking, insurance or dealing in investments, not being a business to which sub-rule (2) of this rule applies, the profits shall include all income received from investments held for the purposes of that part of the business, being income to which the persons carrying on the business are beneficially entitled."

- (iii) in sub-rule (3), after the brackets and figure "(2)" the word, brackets, figure and letter "or (2A)" shall be inserted ;

(c) in rule 7, —

- (i) for sub-rule (1) the following sub-rule shall be substituted, namely :—

"(1) In the case of a business carried on, in any accounting period which constitutes or includes a chargeable accounting period, by a company the directors whereof have throughout that accounting period a controlling interest therein—

- (a) in computing the profits for that accounting period ; and

(b) if

- (b) if the standard profits of the business are computed by reference to the profits of a standard period, also in computing, in relation to any such chargeable accounting period, the profits for the standard period,

no deduction shall be made in respect of directors' remuneration." ;

- (ii) in sub-rule (2), for the words " In this rule " the words, brackets and figure " In sub-rule (1) of this rule " shall be substituted ;

- (iii) after sub-rule (2) the following sub-rule shall be added, namely :—

" (3) If, in the case of a business carried on by a company in any accounting period which constitutes or includes a chargeable accounting period, the directors of the company—

- (a) have during any part of that accounting period, or

- (b) had during the whole or any part of any previous accounting period which includes the whole or any part of any chargeable accounting period or the whole or any part of the standard period (if any),

a controlling interest therein, and the case is not one to which sub-rule (1) of this rule applies, then, except in so far as the Central Board of Revenue otherwise directs, no deduction shall be made in respect of directors' remuneration either in computing the profits for the first-mentioned accounting period or in computing in relation to any chargeable accounting period wholly or partly included in that accounting period, the profits of the standard period (if any). " ;

- (d) after rule 10, the following rule shall be added, namely :—

" 11. Where in respect of any accounting period a deduction would, apart from the provisions of this rule, be allowable in computing profits, and, in the opinion of the Excess Profits Tax Officer, the deduction does not represent a sum reasonably and properly attributable to that accounting period, only such part of the deduction shall be allowable as a deduction for that period as appears to the Excess Profits Tax Officer to be reasonably and properly attributable

to that

to that period, and any balance of the deduction shall be treated as attributable to such other accounting period or periods (whether or not they include, or fall wholly or partly within, the standard period, if any, or any chargeable accounting period) as the Excess Profits Tax Officer thinks proper.

Any person who is dissatisfied with a determination of the Excess Profits Tax Officer under this rule may, at any time before the expiry of forty-five days from the date on which such determination is communicated to him, appeal to the Board of Referees through the Excess Profits Tax Officer."

10. In Schedule II to the said Act,—

Amendment of  
Schedule II,  
Act XV of 1940.

- (a) in sub-rule (2) of rule 1, after the words "written down value" the following words shall be inserted, namely :—

"and to such other deductions in respect of reduced values of assets as are allowable in computing profits for the purposes of income-tax";

- (b) at the end of sub-rule (1) of rule 2 the following shall be inserted, namely :—

"The debts to be deducted under this sub-rule shall include any such sums in respect of accruing liabilities as are allowable as a deduction in computing profits for the purposes of excess profits tax or would have been so allowable if the period for which the amount of capital is being computed had been a chargeable accounting period; and the said sums shall be deducted notwithstanding that they have not become payable.";

- (c) after rule 6 the following rule shall be added, namely :—

"7. (1) If—

- (a) the Central Board of Revenue is satisfied, as respects any assets of any business the standard profits of which are computed by reference to the profits of a standard period, that during that period or any part thereof those assets were inherently unproductive, and

- (b) an application that this rule shall have effect is made through the Excess Profits Tax Officer to the Central Board of Revenue by the person carrying on the business,

then,



then, in computing the average amount of the capital employed in the business in the standard period and in all chargeable accounting periods, those assets, and any other assets of the business, shall be treated as not having been assets thereof during any part of the period during which, in the opinion of the Central Board of Revenue, they were inherently unproductive :

Provided that in the case of a business the standard profits of which depend directly or indirectly upon a direction of the Board of Referees under sub-section (3) of section 6, or of the Central Board of Revenue under sub-section (1) of section 26 of this Act the provisions of this rule shall have effect to such extent only as the Central Board of Revenue thinks proper :

Provided further that an application to the Central Board of Revenue under this rule shall be presented to the Excess Profits Tax Officer before the expiry of the period specified in the notice issued under sub-section (1) of section 13 of this Act or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section.

- (2) Where sub-rule (1) of this rule has effect on the application of the person carrying on any business, any computation of capital of the business made before the making of the application, and any assessment affected by that computation shall be revised accordingly."

# THE INDIAN FINANCE (No. 2) ACT, 1940.

(Made by the Governor General on the 29th  
November, 1940.)

An Act to alter the maximum rates of postage under the Indian Post Office Act, 1898, to increase the rates of the taxes on income imposed by the Indian Finance Act, 1940, by a surcharge for the purposes of the Central Government, and to increase the rate of super-tax payable by companies.

**VI of 1898.**  
**XVI of 1940.** **W**HEREAS it is expedient to alter the maximum rates of postage under the Indian Post Office Act, 1898, to increase the rates of the taxes on income imposed by the Indian Finance Act, 1940, by a surcharge for the purposes of the Central Government, and to increase the rate of super-tax payable by companies ;

It is hereby enacted as follows :—

**1. (1)** This Act may be called the Indian Finance Short title and extent.  
(No. 2) Act, 1940.

(2) It extends to the whole of British India.

**VI of 1898.**  
**XVI of 1940.** **2.** In the First Schedule to the Indian Post Office Inland postage rates.  
Act, 1898, as inserted in that Act by section 6 of the Indian Finance Act, 1940,—

(a) in the first entry under the heading “ *Letters* ”, for the words “ One anna ” the words “ One and a quarter annas ” shall be substituted ;

(b) for the first entry under the heading “ *Book, Pattern and Sample Packets* ” the following entry shall be substituted, namely :—

“ For the first five tolas or  
fraction thereof.....Nine pies ” ;

(c) in the second entry under the heading “ *Book, Pattern and Sample Packets* ”, for the words “ in excess of two and a half tolas ” the words “ in excess of five tolas ” shall be substituted.

**XVI of 1940.** **3. (1)** Subject to the provisions of this section, the Income-tax and super-tax.  
rates of income-tax, and the rates of super-tax other than super-tax payable by a company, imposed by sub-section (1) of section 7 of the Indian Finance Act, 1940, shall in respect of the year beginning on the 1st day of April, 1940, be increased by a surcharge for the purposes of the Central Government amounting to one-twelfth

*Price anna 1 or 1½d.*

of each such rate, and the rate of super-tax payable by a company imposed by the said sub-section shall in respect of the same year be increased by one-twelfth.

(2) In making any assessment for the year ending on the 31st day of March, 1941, —

(a) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" or under the head "Interest on Securities", or any income from dividends in respect of which he is deemed under section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in British India, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates in force before the commencement of this Act on his total income the same proportion as the amount of such inclusions bears to his total income : XI of 1922.

(b) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the provisions of sub-section (2) of section 18 of the Indian Income-tax Act, 1922, the super-tax payable by the assessee on that portion of his total income which consists of such inclusions shall be an amount bearing to the total amount of super-tax payable according to the rates in force before the commencement of this Act on his total income the same proportion as the amount of such inclusions bears to his total income. XI of 1922.

(3) For the purposes of the proviso to sub-section (2) of section 18 of the Indian Income-tax Act, 1922, the amount by which any deduction made under that sub-section by a person responsible for paying any income chargeable under the head "Salaries" falls short of the deduction which could have been made had the rates imposed by this Act then been in force shall be deemed to be a deficiency arising out of a previous deduction or failure to deduct. XI of 1922.

(4) Notwithstanding that the Income-tax Officer has assessed the total income of an assessee and has determined the sum payable thereon under section 23 of the Indian Income-tax Act, 1922, he may proceed to determine the further sum payable by such assessee by virtue of sub-section (1) of this section, and such further sum shall for the purposes of the Indian Income-tax Act, 1922, be deemed to be a sum determined under section 23 of that Act. XI of 1922









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